

Lease

Agreement

Transcript Document No. 2

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

AND

PALM III, LLC

LEASE AGREEMENT

Dated as June 1, 2004

New York City Industrial Development Agency
\$4,875,000 Industrial Development Revenue Bonds, Series 2004A
(Aabco Sheet Metal Co., Inc. Project)

and

New York City Industrial Development Agency
\$650,000 Taxable Variable Rate
Industrial Development Revenue Bonds, Series 2004B
(Aabco Sheet Metal Co., Inc. Project)

Record and Return To:

Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Attention: Scott R. Singer, Esq.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of June 1, 2004, by and between 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 PALM III, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), having its principal office at 255 Randolph Street, Brooklyn, New York 11237, party of the second part:

WITNESSETH:

WHEREAS, 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 (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 1082 of the 1974 Laws of New York, as amended (together with the Enabling Act, the "Act"), for the benefit of The City of New York and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency entered into negotiations with the Lessee, to induce the Lessee to commence with the acquisition, renovation, furnishing and equipping of a manufacturing facility (the "Facility"), consisting of the acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land located at 47-40 Metropolitan Avenue, Queens, New York 11385, for use by Aabco Sheet Metal Co. Inc. (the "Sublessee") in manufacturing HVAC sheet metal systems and accessories for the building and construction industry (the Facility and acquisition, renovation, furnishing and equipping thereof and the costs related thereto are herein referred to as the "Project"), by leasing the Project from the Lessee, for subsequent sublease to the Lessee for further sub-sublease to the Sublessee; and

WHEREAS, Agency financing assistance is necessary to provide employment in, and is beneficial for the economy of, The City of New York and is reasonably necessary to induce the Lessee to proceed with the Project; and

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project and for incidental and related costs thereto, will issue and sell its Industrial Development Revenue Bonds, Series 2004A (Aabco Sheet Metal Co., Inc. Project) in the aggregate principal amount of \$4,875,000 (the "Series 2004A Bonds") and its Taxable Variable Rate Industrial Development Revenue Bonds, Series 2004B (Aabco Sheet Metal Co., Inc. Project) in the aggregate principal amount of \$650,000 (the "Series 2004B Bonds"; and, together with the Series 2004A Bonds, the "Bonds") pursuant to the Act, the Bond Resolution and an Indenture of Trust dated as of the date hereof (the "Indenture") between the Agency and Wachovia Bank, National Association, as trustee (the "Trustee"), securing the Series 2004 Bonds; and

WHEREAS, concurrently with the execution hereof: (i) the Agency, the Lessee and the Sublessee will grant a mortgage lien on and security interest in the Facility to the Trustee as security for the Series 2004 Bonds; and (ii) the Lessee, the Sublessee and Richard Minieri, Edmund Mei and Ronald Palmerick, as individual guarantors (collectively, the "Individual Guarantors") (the Lessee, the Sublessee and the Individual Guarantors being collectively, the "Guarantors") will guarantee the payment of the principal and Purchase Price of, redemption premium, if applicable, and interest on the Series 2004 Bonds, and the payments, obligations, covenants and agreements of the Lessee under this Lease Agreement and the other Security Documents, pursuant to the terms of a Guaranty Agreement, dated as of the date hereof (the "Guaranty"), from the Guarantors to the Trustee;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this Lease Agreement):

ARTICLE I DEFINITIONS AND REPRESENTATIONS

Section 1.1 Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Indenture or the Tax Compliance Agreement hereinbelow defined. The following terms shall have the following meanings in this Lease Agreement:

Agency shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agency Mortgage shall mean the Agency Mortgage and Security Agreement, of even date herewith, from the Agency, the Lessee and the Sublessee to the Trustee, and shall include any and all amendments thereof and supplements thereto and assignment of interests therein hereafter made in conformity therewith and with the Indenture.

Agreement shall mean this Lease Agreement, dated as of June 1, 2004, between the Agency and the Lessee, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Executive Director, General Counsel or Vice President for Legal Affairs 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 Lessee, any Member, (iii) in the case of the Sublessee, its President, any Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary, and (iv) in the case of the Individual Guarantors, the Individual Guarantors or their respective duly authorized attorneys in-fact; 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 of any Person pursuant to the terms of this Agreement or any other Security Document, 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.

Bondholder shall mean (i) GE Capital Public Finance, Inc. or its successors or assigns, or (ii) if the Bonds are held by more than one Person, the Majority Bondholder.

Bonds shall mean the Series 2004 Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder.

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency with respect to the Facility, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Default shall mean an event that, with giving of notice or passage of time or both, would constitute an Event of Default in accordance with Section 7.1 hereof.

Eligible Materials shall mean all construction materials used in the construction of the Facility Realty, and all Facility Equipment, in each case acquired by the Lessee as agent for and on behalf of the Agency pursuant to the Sales Tax Letter in connection with the Project on or before the completion of the Project for incorporation in the Facility.

Event of Default shall have the meaning specified in Section 7.1 hereof.

Facility shall mean, collectively, the Facility Realty and the Facility Equipment.

Facility Equipment shall mean those items of equipment, furniture, furnishings or other tangible personalty acquired for installation or use at the Facility Realty as part of the Project pursuant to Section 2.1 hereof and described in the Description of Facility Equipment in the Appendices attached thereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and

accessories incorporated therein or affixed thereto. The Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 of this Agreement, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced, and further exclude all items of Facility Equipment removed as provided in Section 4.2 hereof.

Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices hereto and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof, and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on December 1 and ending on November 31, or such other year of similar length as to which the Lessee shall have given prior written notice thereof to the Agency, the Bondholder and the Trustee at least ninety (90) days prior to the commencement thereof.

Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements now existing or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.1 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

Indenture shall mean the Indenture of Trust of even date herewith by and between the Agency and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Land shall mean those certain lots, pieces or parcels of land in Block 3375, P/O Lot 15 and generally known by the street address 47-40 Metropolitan Avenue, Queens 11385, in Queens County, New York, all as more particularly described in the "Description of Facility Realty" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, 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 Lessee, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

Lessee shall mean Palm III, LLC, a limited liability company organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Majority Bondholder shall mean the holder of at least 51% in aggregate principal amount of the Bonds. Provided, however, Majority Bondholder shall be deemed to be 100% of the holders of the Bonds with respect to (A) the approval of any Supplemental Indenture with respect to the following: (i) a change in the times, amounts or currency of payment of the principal of, redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Redemption Price of any Outstanding Bond or the rate of interest thereon or any extension of the time of payment thereof, without the consent of the Holder of such Bond, (ii) the creation of a lien upon or pledge of revenues or rental income from or in connection with the Facility other than the lien or pledge created by the Indenture, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to the definition of Majority Bondholder and (B) the waiver of any default with respect to the payment of principal and interest on the Bonds.

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 and expenses and any extraordinary expenses of the Agency, the Bondholder or the Trustee) incurred in the collection thereof.

Prohibited Person shall mean (i) any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, 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 grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (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.

Project shall mean the acquisition, renovation, furnishing and equipping of the Facility more particularly described in the Description of Project in the Appendices hereto.

Sales Tax Benefit shall mean the sales and use tax exemptions conferred upon the Lessee pursuant to the Sales Tax Letter.

Sales 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 the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the Appendices to this Agreement.

Series 2004 Bonds shall mean, collectively, the Agency's \$4,875,000 Industrial Development Revenue Bonds, Series 2004A (Aabco Sheet Metal Co., Inc. Project) and \$650,000 Taxable Variable Rate Industrial Development Revenue Bonds, Series 2004B (Aabco Sheet Metal Co., Inc. Project) authorized, issued, executed, authenticated and delivered under the Indenture.

Tax Compliance Agreement shall mean the Tax Compliance Agreement, dated June 30, 2004, among the Agency, the Lessee and the Sublessee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Trustee shall mean Wachovia Bank, National Association, New York, New York, in its capacity as Trustee, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

Section 1.2 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, 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.

Section 1.3 Representations and Warranties by Agency. The Agency makes the following representations and warranties:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws

of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement.

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2004 Bonds in the aggregate principal amount of \$5,525,000. The Series 2004 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(c) Prior to the issuance of the Series 2004 Bonds, the Agency will duly make the election provided for under Section 144(a)(4)(A) of the Code.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the leasing thereof from the Lessee for subsequent sublease to the Lessee is reasonably necessary to induce the Lessee to proceed with the Project.

Section 1.5 Representations and Warranties by Lessee. The Lessee makes the following representations and warranties:

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its articles of organization or operating agreement, 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. The Lessee is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and each other Security Document to which the Lessee is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite limited liability company action on the part of the Lessee and will not violate any provision of law, rule, regulation, any order of any court or agency of government, or the articles of organization or operating agreement of the Lessee, or any indenture, agreement or other instrument to which the Lessee 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 or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) Expenses for supervision by the officers or employees of the Lessee, and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such Persons were specifically employed for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Lessee as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(d) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Lessee to proceed with the Project.

(e) The completion of the Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee, the Sublessee or any Affiliate of either from outside the City (but within the State of New York) to within the City or in the abandonment of one or more of such plants or facilities of the Lessee, the Sublessee or any Affiliate thereof within the State but outside of the City.

(f) The total cost of the Project being funded with the Series 2004 Bonds is at least \$5,525,000, which represents only a portion of the total cost to the Lessee.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2004 Bonds shall be capable of being treated on the books of the Lessee as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(h) The property included in the Facility is either property of the character subject to the allowance for depreciation under Section 167 of the Code or land.

(i) No part of the proceeds of the Series 2004 Bonds will be used to finance inventory or will be used for working capital.

(j) The Project is included within the definition of "project" under the Act.

(k) This Agreement and the other Security Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms subject to equitable remedies, creditors rights and bankruptcy.

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

(m) There is no action or proceeding pending or to the best knowledge of the Lessee threatened by or against the Lessee by or before any court or administrative agency that might adversely affect the ability of the Lessee to perform its obligations under this Agreement and each other Security Document to which the Lessee shall be a party or the financial or operating condition of the Lessee and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Security Documents have been obtained.

(n) The Lessee intends to operate the Facility or cause the Facility to be operated in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(o) No part of the proceeds of the Series 2004 Bonds (and no sales or use tax exemptions available under the Sales Tax Letter) will be used to finance a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one third of the total project cost. For purposes of this representation, retail sales shall mean: sales by a registered vendor under article twenty-eight of the tax primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or sales of a service to such customers.

(q) Neither the Lessee nor any Affiliate thereof is a Prohibited Person.

(r) Pursuant to the Company Lease, the Lessee has vested the Agency with a valid leasehold interest in the Facility Realty.

(s) The aggregate rentable square footage of the Improvements constituting part of the Facility will be approximately 75,000 rentable square feet and the aggregate square footage of the Land is approximately 85,000 square feet.

(t) None of the proceeds of the Series 2004 Bonds will be used with respect to any property other than the Facility.

(u) The Facility Realty is properly zoned for its current and anticipated use and the use of the Improvements will not violate any applicable zoning, land use, environmental or similar law or restriction. Lessee has all licenses and permits to use the Facility.

(v) The Lessee has heretofore furnished to Bondholder the audited financial statement of the Sublessee for its fiscal years ended November 30, 1999, November 30, 2000, November 30, 2001, November 30, 2002 and November 30, 2003 and those statements fairly present the financial condition of the Sublessee on the dates thereof and the results of its operations and cash flows for the periods then ended and were prepared in accordance with generally accepted accounting principles. Since the date of the most recent financial statements, there has been no material adverse change in the business, properties or condition (financial or otherwise) of any Guarantor.

(w) The Lessee has paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by it. The Lessee has filed all federal, state and local tax returns which are required to be filed, and the Lessee has paid or caused to be paid to the respective taxing authorities all taxes as shown on said returns or on any assessment received by it to the extent such taxes have become due.

(x) All financial and other information provided to the Bondholder by or on behalf of any Guarantor is true and correct in all material respects, and no Guarantor has omitted to provide the Bondholder with any information which would be material to the Bondholder's decision to purchase the Series 2004 Bonds and, as to projections, valuations or pro forma financial statements, present a good faith opinion as to such projections, valuations and pro forma condition and results.

(y) No person other than Lessee and Sublessee is in occupancy or possession of any portion of the Facility.

(z) Neither any Guarantor nor any individual or entity owing directly or indirectly any interest in the Lessee or the Sublessee, is an individual or entity whose property or interests are subject to being "blocked" under any of the Terrorism Laws or is otherwise in violation of any of the Terrorism Laws. "Terrorism Laws" means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations) and the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies and any other requirements of any governmental authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

ARTICLE II THE PROJECT

Section 2.1 The Project.

(a) The Lessee shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2004 Bonds good and marketable leasehold title to the Facility Realty, and good and merchantable leasehold title to such items of the Facility Equipment as shall have been acquired at the time of such delivery and payment, in each case free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2004 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2004 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project substantially in accordance with the Plans and Specifications. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Lessee.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Lessee, the Lessee has undertaken to proceed with the design of the Project, the preparation of the Facility site and the completion of the Project work. The Lessee agrees to complete the Project on behalf of the Agency.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of the leasehold interest in the Facility to the Agency and, the delivery of any instruments and documents and their filing and recording, if required; (ii) all taxes and charges payable in connection with such conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1(a) hereof; and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Project, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, including, with respect to any item of Facility Equipment, all manufacturers' instructions and warranty requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Upon completion of the Project, the Lessee will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee immediately upon receipt thereof. To the extent that Agency ownership of the Facility shall require that the Agency execute documents to assist the Lessee in the use and occupancy of the Facility, the Agency shall, at the sole cost and expense of the Lessee, execute such documents as may be reasonably requested by the Lessee.

(f) The Lessee will extend to the Trustee all extendable vendors' warranties received by the Lessee in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform work with respect to the Project.

(g) The Lessee shall take such action and institute such proceedings as shall be reasonably necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts in excess of \$500,000 recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(h) Leasehold title to all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility shall vest in the Agency immediately upon payment therefor. The Lessee shall promptly, upon the acquisition thereof by or on behalf of the Lessee convey or cause to be conveyed to the Agency good and merchantable leasehold title to any item of Facility Equipment which has not theretofore been conveyed to the Agency pursuant to Section 2.1(a) hereof, free and clear of all liens, claims, charges, security interests and encumbrances other than Permitted Encumbrances, and cause each such item of Facility Equipment to be subjected to the lien and security interest of the Agency Mortgage. The

Lessee shall take all action necessary to so vest leasehold title to the Facility Equipment in the Agency and to protect such leasehold title against claims of any third parties.

(i) Prior to any disbursement from the Project Fund pursuant to Section 5.02 of the Indenture, the Lessee shall deliver the following items to the Bondholder:

(i) Vendor invoice(s) and/or bill(s) of sale relating to the Facility and, if such invoices have been paid by the Lessee, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Code.

(ii) An as built survey of the Facility prepared in compliance with the requirements set forth in Schedule G hereto.

(iii) An ALTA (or equivalent) mortgagee policy of title insurance in the maximum amount of the appraised value of the Facility Realty or as determined by the Bondholder, with reinsurance and endorsements as the Bondholder may require, containing no exceptions to title (printed or otherwise) which are unacceptable to the Bondholder, and insuring that the Agency Mortgage is a first-priority lien on the Facility and related collateral. Without limitation, such policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditors' rights, if permissible) or, if not available, the form commonly used in the State, insuring the Trustee and its successors and assigns on behalf of the Bondholder; and (ii) include the following endorsements and/or affirmative coverages: (A) ALTA 9 Comprehensive, (B) Survey, (C) Access, (D) Environmental Protection Lien, (E) Contiguity (as applicable), and (F) Tax Parcel.

(iv) A zoning compliance letter from the applicable City Planner's or Zoning Department's office. Without limitation, such zoning compliance letter shall (i) provide the zoning classification code for the Facility, (ii) be addressed to the Lessee and the Bondholder, (iii) include the address of the Facility, (iv) describe the type(s) of permitted use of the Facility, and (v) include an expiration-dated copy of conditions or restrictions of use. If the applicable governmental agency does not, or is unwilling to, provide the required zoning compliance letter, the Bondholder will require an ALTA 3.1 Zoning Endorsement (with additional coverage for number and type of parking spaces) to the mortgagee policy of title insurance.

(v) The Bondholder and the Independent Engineer shall be furnished for approval a guaranteed maximum price construction contract from a general contractor acceptable to the Bondholder, a final budget, a project pro forma, a full set of final plans and specifications for the Facility, evidence that the Facility complies with all applicable zoning ordinances, assurance of utility services, and a soils report, all of which must be approved by the Bondholder.

(vi) Any other documents and items required by the Bondholder.

(vii) A copy of the final, permanent and unconditional Certificate of Occupancy for the Facility.

(viii) An engineer's "walk-through" inspection prepared by an Independent Engineer acceptable to the Lessee's expense stating that the Facility was built in conformance with approved Plans and Specifications with no evident structural deficiencies and including the building's compliance with the Americans with Disabilities Act of 1990 and all regulations promulgated thereunder.

(ix) A final appraisal of the Facility addressed to the Bondholder, in form and substance acceptable to the Bondholder and prepared by an MAI certified appraiser acceptable to the Bondholder in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. In addition to the foregoing requirements, whenever the Income Approach is utilized by the appraiser, the report shall include a direct capitalization analysis as well as a discounted cash flow analysis and a final estimate of value based on the property's fee simple estate.

(x) Any other documents and items required by the Bondholder.

(j) Upon receipt of the final appraisal, if an Undersecured Amount exists, the Lessee shall either (i) deliver or cause to be delivered to Trustee a letter of credit, in form and substance acceptable to the Bondholder, in the amount of such Undersecured Amount plus 120 days' accrued interest to be issued by a bank acceptable to the Bondholder or (ii) prepay in part the Bonds in the amount of the Undersecured Amount pursuant to Section 2.04(e) of the Indenture. Undersecured Amount shall mean the excess of (i) the proceeds of the Bonds over (ii) the LTV Amount. The LTV Amount shall mean the least of (i) \$5,525,000, (ii) 90% of the cost of the Facility, and (iii) the product of (A) 75% and (B) the amount of the final appraisal of the Facility.

Section 2.2 Completion by Lessee.

(a) The Lessee unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by January 1, 2005, subject to Section 9.2 hereof, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Bondholder, nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement.

(b) Promptly following the completion of the Project, the Lessee shall deliver to the Agency, the Bondholder and the Trustee a certificate of an Authorized Representative of the Lessee substantially in the form set forth in Schedule A attached hereto, together with all attachments required thereunder.

Section 2.3 Issuance of Series 2004 Bonds. Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2004 Bonds

in the aggregate principal amount of \$5,525,000 under and pursuant to the resolution adopted by the Agency on April 19, 2004, authorizing the issuance of the Series 2004 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2004 Bonds equal to (i) the interest accruing on the Series 2004 Bonds to the date of delivery thereof, if any, shall be deposited in the Interest Account of the Bond Fund, and (ii) the balance of the proceeds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the provisions of the Indenture. Pending such application, amounts in the Project Fund may be invested as provided in the Indenture.

Section 2.4 Title Insurance. Prior to the delivery of the Series 2004 Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) leasehold title insurance in an amount not less than \$500,000 insuring the Agency's leasehold interest in the Facility under the Company Lease against loss as a result of defects in the leasehold interest of the Agency, (b) mortgagee title insurance in an amount not less than \$5,525,000 insuring the Trustee's interest under the Agency Mortgage as holder of a mortgage lien on the Facility Realty, and (c) a current survey of the site of the Facility Realty certified to the Agency, the Bondholder, the Trustee, the Lessee and the title insurance company which meets the requirements of Schedule G attached hereto and made a part hereof. The title insurance policies shall be subject only to Permitted Encumbrances. Any proceeds of such leasehold title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in title. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Redemption Account of the Bond Fund. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Trustee's interest as holder of a mortgage lien on the Facility Realty shall be paid to the Trustee and deposited by the Trustee in the Redemption Account of the Bond Fund.

Section 2.5 Limitation on Sales Tax Exemption.

(a) Any exemption from Sales Taxes resulting from or occasioned by the Agency involvement with the Project shall be limited to purchases of Eligible Materials by or for the Lessee as agent for the Agency pursuant to the Sales Tax Letter, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project.

(b) The Lessee covenants and agrees that it shall include the following language (through an attached rider, or by reference to the Sales Tax Letter or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency in connection with the Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Palm III, LLC, a limited liability company organized and existing under the laws of the State of New York (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, renovation, furnishing and equipping of a manufacturing facility (the "Facility") consisting of the acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land located at 47-40 Metropolitan Avenue, Queens, New York 11385, for use by Aabco Sheet Metal Co., Inc. in manufacturing HVAC sheet metal systems and accessories for the building and construction industry (the Facility and acquisition, renovation, furnishing and equipping thereof and the costs related thereto are herein referred to as the "Project"). The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be subject to the above applicable language in substantially the above form, such contract, agreement, 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 Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) Concurrently with the execution of this Agreement, the Agency shall make available to the Lessee the Sales Tax Letter. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such

amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2004 Bonds 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 completion of the Project as provided in Section 2.2 hereof or (3) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter

(A) shall not be available for payment of any costs other than Project Costs for Eligible Materials for incorporation into or use at the Facility,

(B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by the Lessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Eligible Materials unless such item is used solely by the Lessee at the Facility,

(C) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, or (iii) 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 for use only at the Facility Realty by the Lessee,

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.5(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(E) shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee at the Facility,

(F) shall not be available for any tangible movable personal property (including computer software), or trade fixture, for use by any person other than the Lessee at the Facility,

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

(H) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Taxes absent involvement by the Agency,

(I) shall not be available subsequent to the termination of this Agreement, and

(J) shall only be available for those costs set forth in Exhibit A to the Sales Tax Letter.

(d) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.5(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(e) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend both to those Project Costs the payment for which shall first be made from the proceeds of the Series 2004 Bonds as well as those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2004 Bonds.

(f) Upon request by the Agency of, and reasonable notice to, the Lessee, the Lessee shall make available at reasonable times to the Agency all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency as shall be necessary to indicate in reasonable detail those costs to which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(g) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter.

(h) The Lessee shall on February 15, 2005 and on each February 15 thereafter until the February 15 following the calendar year in which the Sales Tax Letter shall have been terminated, cancelled, or expired, file a statement (Form ST-340 in the form attached hereto as Schedule F or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be 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 Lessee or agents of the

Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement related to a statement filing with the New York State Department of Taxation and finance, the Lessee 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, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials on the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee, subject to any rights of the Lessee to cure such failure permitted to the Lessee under applicable law. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(i) The Lessee agrees to submit to the Agency on August 1 of each year, beginning August 1, 2004, a completed Benefits Report in the form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on the June 30 immediately preceding such August 1.

ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. Pursuant to the Company Lease, the Lessee has leased the Facility to the Agency. The Agency hereby subleases to the Lessee and the Lessee hereby subleases from the Agency the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Lessee shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a manufacturing facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Lessee shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on midnight (New York City Time) on the later of (a) July 1, 2019 or such earlier date as this Agreement may be terminated as hereinafter provided or (b) the date that all amounts due and owing under the Bonds, the Lease Agreement and the Indenture have been paid in full. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility as the Agency has received under the Company Lease.

Section 3.3 Rental Provisions; Pledge of Agreement and Rent. (a) The Lessee covenants to make rental payments which the Agency agrees shall be paid by the Lessee directly to the Trustee on each Lease Rental Payment Date for deposit in the Bond Fund in an amount

equal to the sum of (i) with respect to interest due and payable on the Bonds, an amount equal to the interest next becoming due and payable on the Bonds on the immediately succeeding Interest Payment Date (less any amount available in the Project Fund available for transfer to the Interest Account of the Bond Fund), (ii) the principal amount of the Bonds then Outstanding which will become due on the immediately succeeding Interest Payment Date (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), and (iii) the principal of and redemption premium, if any, on the Bonds to be redeemed which will become due on the immediately succeeding redemption date together with accrued interest to the date of redemption. The Lessee further agrees to pay such additional amounts as set forth in the Indenture with respect to interest on the Series 2004 Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Reserved.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Lessee shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

(d) In the event the Lessee should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid shall have been fully paid.

(e) The Lessee shall have the option to prepay its rental obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds.

(f) No further rental payments need be made to the Agency during the term of this Agreement when and so long as the amount of cash and/or Government Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in Section 10.01 of the Indenture.

(g) Pursuant to the Agency Mortgage, the Agency shall grant a lien on and security interest in the Facility prior to the lien of this Agreement, and pursuant to the Indenture the Agency will pledge and assign to the Trustee as security for the Bonds all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Lessee hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement.

(h) The Lessee covenants and agrees to pay, as supplemental rent, to the Trustee for deposit into the Rebate Fund, sufficient moneys as and when necessary to meet the Rebate Requirement described in the Tax Compliance Agreement (it being understood that any

amounts so deposited that exceed the required amounts shall be promptly refunded to Lessee, free and clear of the lien of the Indenture).

(i) The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Lessee further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions of counsel, required of the Agency under this Agreement or the Indenture.

Section 3.4 Obligation of Lessee Unconditional. The obligation of the Lessee to pay the rent and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Bondholder and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements.

(a) During the term of this Lease Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was designed and intended and contemplated by this Lease Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure that the security for the Bonds shall not be materially impaired. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

(b) With the consent of the Bondholder, the Lessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it may determine to be desirable for its uses and purposes, provided that (i) the fair market value of the Facility is not reduced below their value immediately before such alteration or addition and

the usefulness, structural integrity or operating efficiency of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$100,000, or in the case such alteration or addition shall affect any structural element of the Facility, under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Agency, the Trustee and the Bondholder only after the Lessee shall have furnished to the Agency, the Trustee and the Bondholder, if requested, a labor and materials payment bond, or other security, satisfactory to the Agency, the Trustee and the Bondholder, and (v) such additions or alterations do not change the nature of the Facility so that they would not constitute a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to the Company Lease, this Lease Agreement, the Indenture and the Agency Mortgage, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to subject such property to the Company Lease and this Lease Agreement and the lien and security interest of the Indenture and the Agency Mortgage, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment, furniture, furnishings and other personal property not financed with the proceeds of the Bonds (the "Lessee's Property") without subjecting such property to the Company Lease or this Lease Agreement and the lien and security interest of the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall not have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee in the Facility, the Company Lease or this Lease Agreement except for Permitted Encumbrances.

(e) To the extent required by the New York State Finance Law §137, prior to executing any contract with any party for any improvement (as such term is defined in the New York Lien Law) in connection with the Project or the Facility or the provision of any goods or services in connection therewith, and prior to authorizing any party to undertake such improvement (or the provision of such goods and services) without a contract, the Lessee shall deliver to the Agency a copy of the proposed contract therefor along with a bond, in compliance with State Finance Law §137 and otherwise satisfactory to the Agency, guaranteeing prompt payment of monies due all persons furnishing labor or materials for the contractor or his subcontractor in the prosecution of his work provided for in such contract. The Agency shall have no liability or responsibility for the cost of such bond(s). Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the

Agency in connection with the Project (such agency relationship being deemed to be immediately revoked, subject to reinstatement upon compliance with such requirement).

Section 4.2 Removal of Property of the Facility.

(a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (the "Existing Facility Property") free of the leasehold interest of the Company Lease and this Agreement, provided that:

(i) such Existing Facility Property is substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and/or utility and (B) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances; or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$100,000, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition if the Bonds are subject to optional redemption;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Redemption Account of the Bond Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$100,000 shall be retained by the Lessee.

(b) The Lessee shall deliver or cause to be delivered to the Agency, the Trustee and the Bondholder appropriate documents subjecting such substitute or replacement property to the Company Lease and this Lease Agreement and the lien and security interest of the Agency Mortgage, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest, if any, to any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to the Company Lease and this Lease Agreement and the lien and security interest of the Agency Mortgage any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

(c) The Lessee shall not, without the prior written consent of the Agency and the Trustee and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Facility Equipment or change the location of the Facility Equipment or any part thereof from the Facility Realty; provided, however, it is

acknowledged that Affiliates of the Lessee may operate or utilize, at the Facility Realty, the Facility Equipment or any part thereof.

(d) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the rentals and other amounts payable by the Lessee under this Agreement.

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land for use by the Sublessee in manufacturing HVAC sheet metal systems and accessories for the building and construction industry. The Facility is located at 47-40 Metropolitan Avenue, Queens, New York 11385, being Block 3375, P/O Lot 15.

(b) *Payments Prior to PILOT Commencement Date:*

The PILOT Commencement Date shall be July 1, 2005. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Lessee and not owned by the Agency.

(c) *Payments in Lieu of Real Estate Taxes, Generally:*

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty, payable to The Bank of New York, as PILOT Depository (or to such other Person as the Agency shall direct the Lessee in writing) in installments aggregating the full amounts due at least seven (7) Business Days before such times as Real Estate taxes are due the City below or at such other times as the Agency may designate in writing. Except as otherwise provided below in this Section 4.3, the Lessee shall make payments in lieu of real estate taxes (i) with respect to the Land constituting part of the Facility Realty, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements constituting part of the Facility Realty, in the amounts as determined in subsections (e) and (f) below.

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Department of Finance, Assessors' Office of the City, the City Surveyor, or any other relevant official of the City fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of The City of New York or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder; provided, however, that the Agency shall provide, upon request and at the sole cost and expense of the Lessee, reasonable cooperation with the Lessee in any such event.

The Lessee shall take such action as is reasonably necessary in order to correct any defect or deficiency which may prevent the Facility Realty from being recognized as exempt by the City. The Lessee acknowledges that the Agency has not represented the availability of any such exemption for the Facility Realty, and the Lessee hereby releases the Agency from any claim arising from any loss of the benefits which were contemplated hereunder.

The Lessee acknowledges that the PILOT Commencement Date will not be deferred notwithstanding any loss of benefits contemplated hereunder in the event that the City does not recognize the Agency's exemption from real estate taxes on the PILOT Commencement Date.

(d) *Payments in Lieu of Taxes on the Land:*

For the period commencing on the PILOT Commencement Date until the earlier of (i) June 30, 2026 (the "Full Abatement Termination Date") or (ii) the date on which the Agency no longer has a leasehold interest in the Facility, the Lessee shall make no payments of real estate taxes with respect to the Land constituting part of the Facility Realty (subject to Section 4.3(i)) hereof. Following the Full Abatement Termination Date, the Lessee shall be required for each City Tax Fiscal Year (as defined below) to pay the following percentage of otherwise applicable Full Land Taxes (as described below):

<u>Year</u>	<u>Percentage of Full Land Taxes</u>
July 1, 2026 - June 30, 2027	20%
July 1, 2027 - June 30, 2028	40%
July 1, 2028 - June 30, 2029	60%
July 1, 2029 - June 30, 2030	80%

City Tax Fiscal Year shall mean each annual period commencing on July 1, and ending on the immediately succeeding June 30, or such other annual period as shall be established by lawful authority as the City's "tax fiscal year" or its equivalent.

Full Land Taxes shall mean that amount of taxes with respect to the Land constituting part of the Facility as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land exclusive of the Agency's leasehold interest therein.

For the period commencing on June 30, 2030 (the "Abatement Termination Date") until the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer holding a leasehold interest in the Facility, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer has a leasehold interest in the Land, the Lessee shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.

(e) *Payments in lieu of Taxes on the Improvements:*

For the period commencing on the PILOT Commencement Date and terminating on the PILOT Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements constituting part of the Facility Realty:

- (i) from the PILOT Commencement Date through June 30, 2026, an amount equal to the lesser of CRET (i.e., Current Real Estate Taxes), and STRET (i.e., Stabilized Real Estate Taxes); and
- (ii) from July 1, 2026, through the PILOT Termination Date, and assuming CRET is greater than STRET for the fiscal years occurring within such period, the following amounts as respectively calculated for the following years:

Year	Lessee Pays:
July 1, 2026 - June 30, 2027	STRET + CRET less STRET x 0.2
July 1, 2027 - June 30, 2028	STRET + CRET less STRET x 0.4
July 1, 2028 - June 30, 2029	STRET + CRET less STRET x 0.6
July 1, 2029 - June 30, 2030	STRET + CRET less STRET x 0.8

Provided, however, that if any fiscal year occurring within the period commencing July 1, 2026 through June 30, 2030, CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such fiscal year shall equal CRET.

Certain terms used in the above formula are defined as follows:

CRET or "Current Real Estate Taxes" shall mean the then-current assessed value of Improvements multiplied by the City's then-current real estate tax rate, as if the Facility Realty were owned by the Lessee rather than the Agency.

STRET or "Stabilized Real Estate Taxes" shall mean the assessed value of the Improvements as of November 11, 2003 multiplied by the City's tax rate as of July 1, 2005.

For the period from July 1, 2030 until the PILOT Termination Date, the Lessee shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer holding a leasehold interest in the Facility Realty, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer has a leasehold interest in to the Land, the Lessee shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

(f) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project, the Lessee shall make any alterations of or additions to the Facility Realty ("Additional Improvements"), the Lessee shall: (i) deliver written notice to an Authorized Representative of the Agency of such Additional Improvements within thirty (30) days after the completion thereof; and (ii) request that the Improvements constituting a part of the Facility Realty (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof equal to:

- (i) the amount of increase in assessed valuation of the Facility Realty when the Additional Improvements are first assessed as completed, multiplied by
- (ii) the City's real property tax rate prevailing after such first assessment, and thereafter, less
- (iii) but only with respect to the Additional Improvements and not with respect to any other portion of the Facility Realty, any amount to which the Lessee would be entitled as a result of the Additional Improvements being eligible under the Industrial and Commercial Incentive Program.

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

It is agreed that the Agency shall request the appropriate officer or officers of the City charged with the duty of levying and collecting real estate taxes, to submit to the Lessee at the times the levies for such real estate taxes are made, a statement specifying the amounts and due dates for the payments in lieu thereof, so that the Lessee may make such payments in the correct amounts and on a timely basis.

In the event the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid, and the Lessee agrees to pay the same to the PILOT Depository, or to such other representative of the Agency as the Agency may from time to time designate. The Lessee shall pay a late payment penalty of five per cent (5%) of any amount which is not paid when due under this Section 4.3. In addition, for each month or part thereof that a payment under this Section 4.3 is delinquent beyond the first month, interest shall accrue and be payable by the Lessee on the total amount due as provided above, plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made; and the Agency shall, at the request and sole cost and expense of the Lessee, execute such documents as may be reasonably requested of the Agency by reason of the Agency's title to the Facility Realty.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date of the termination of leasehold interest of the Agency. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the fiscal year in which such termination occurs, shall be responsible for paying the real estate taxes due for the remaining portion of such fiscal year which follows transfer out of the Agency.

With respect to the semi-annual period of the fiscal year in which the Agency's leasehold interest in the Facility Realty is terminated, the Agency shall cause the Collector of the City to apportion that part of the installment payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of termination and ending on the June 30 or December 31 following (as the case may be), as a credit against the real estate taxes owed for such semi-annual period.

(i) *Withdrawal of Real Estate Tax Abatements:*

The Lessee understands and agrees that the Lessee is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Land and Improvements constituting the Facility Realty exclusive of the Agency's leasehold interest therein for that portion of the Facility Realty, if any, utilized or occupied by any Person other than the Lessee for so long as such utilization or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized and occupied or is intended to be utilized or occupied by Persons other than the Lessee. The Lessee agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Facility Realty utilized or occupied by any Person other than the Lessee. The Lessee understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Lessee as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Facility Realty for that portion of the Facility Realty utilized or occupied by Persons other than the Lessee for so long as such utilization or occupation shall continue. The Lessee further agrees to furnish the Agency with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth all Persons other than the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty, the amount of space so occupied or utilized and the percentage of the available square footage of the Facility Realty represented by such occupation or utilization.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Agreement or upon the occurrence of an Event of Default under this Agreement,

the Lessee shall be required to make payments in lieu of real estate taxes on the Land and Improvements constituting a part of the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee exclusive of the Agency's leasehold interest therein. For purposes of the determination of such payments in lieu of real estate taxes, the tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *Survival of Obligations:*

The obligations of the Lessee under this Section 4.3 shall survive the termination or expiration of this Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 4.3, for good cause shown.

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (except to the extent that the Lessee shall have made payments in lieu thereof as provided in Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the rentals hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions solely due to the Agency's leasehold interest in the Facility, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Lessee were the owner of the Facility exclusive of the Agency's leasehold interest therein.

None of the foregoing shall prevent the Lessee from contesting in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee or required by the Bondholder to protect the security intended to be offered by the Security Documents in a manner such that the lien of the Agency Mortgage is not impaired in any way. The Agency shall, at the request and sole cost and expense of the Lessee, and in connection with such contest, execute such documents as may be reasonably requested of the Agency by reason of the Agency's leasehold interest in the Facility Realty.

Section 4.5 Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, 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 Lessee and the Sublessee. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (g) of this Section 4.5 include, without limitation, the insurance coverages described in paragraphs (i) through (v) immediately below (hereinafter "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee, the Sublessee, the Agency, the Trustee and the Bondholder in a minimum amount of \$10,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) General Liability insurance (including contractual liability coverage, together with any Umbrella Liability insurance, naming the Lessee as primary insured, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$10,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), (B) may be effected under overall blanket or excess coverage policies of the Lessee, the Sublessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, the Sublessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee, the Sublessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by laws;

(iv) Automobile liability insurance, to the extent not covered by General Liability insurance, in the amount of \$10,000,000 covering the Lessee and/or the Sublessee, as applicable, for all owned, non-owned and/or hired automobiles, forklifts and other driveable machinery and/or vehicles used in connection with the Facility; and

(v) Such other insurance in such amounts and against such insurance hazards as the Agency or the Bondholder from time to time may reasonably require.

(b) All Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State.

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

(i) designate (except in the case of workers' compensation insurance) the Lessee, the Sublessee, the Trustee, the Bondholder and the Agency as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause and as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund;

(iii) provide that there shall be no recourse against the Agency, the Bondholder or the Trustee 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 respective interests of the Agency, the Bondholder or the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency, the Bondholder and the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency, the Bondholder or the Trustee to the extent that such other insurance provides the Agency, the Bondholder or the Trustee, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(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, the Bondholder or the Trustee until at least thirty (30) days after receipt by the Agency, the Bondholder and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vii) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, 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 any Person insured under such policy; and

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

(d) The Net Proceeds of any Specific Coverage received with respect to any loss or damage to the property of the Facility shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) Concurrently with the original issuance of the Bonds, the Lessee shall deliver or cause to be delivered to the Agency, the Bondholder and the Trustee the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5 upon which the Trustee may conclusively rely to establish compliance with this section: (i) on or prior to the execution and delivery of this Agreement, (A) a broker's certificate of coverage confirming that the Lessee, as of the date of closing, has obtained Specific Coverage in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of required insurance, and (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least thirty (30) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Bondholder and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency, the Bondholder or the Trustee (upon specific written direction from the holders of a majority in aggregate principal amount of the Bonds) to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

(g) THE AGENCY, THE BONDHOLDER AND THE TRUSTEE DO 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 INTEREST OF THE LESSEE OR THE SUBLESSEE.

(h) The Lessee shall further comply with the additional insurance requirements set forth on Schedule H attached hereto and made a part hereof.

Section 4.6 Advances by Agency or Bondholder. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement or the other Security Documents, the Agency or the Bondholder, after first notifying the Lessee in writing of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency or the Bondholder under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency or the Bondholder shall become an additional obligation of the Lessee to the Agency or the Bondholder, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency or the Bondholder. Any remedy herein vested in the Agency, the Trustee or the Bondholder for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency or the Bondholder for the collection of all such amounts so advanced.

Section 4.7 Compliance with Legal Requirements. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all

rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency, the Bondholder and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties with respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Agency, the Bondholder or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee or required by the Bondholder to protect the security intended to be offered by the Security Documents.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Agency and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

(i) the Agency shall have no obligation to rebuild, replace, repair or restore the Facility,

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Lessee under this Agreement, and

(iii) the Lessee will promptly give written notice of such Loss Event to the Agency, the Bondholder and the Trustee, generally describing the nature and extent thereof.

(b) Upon the occurrence of a Loss Event, the Net Proceeds (subject to Section 4.5(d) hereof) derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund and the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), promptly and diligently rebuild, replace, repair or restore the Facility with the consent of the Bondholder and to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee or the Bondholder, nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to purchase the Facility and make advance rental payments to redeem the Bonds in whole.

Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency, the Bondholder and the Trustee in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (ii) above to be exercised in accordance with the provisions of clause (ii) above.

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Lessee shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund to be applied to the redemption of the Bonds in accordance with the Indenture.

(c) All such rebuilding, replacements, repairs or restorations shall

(i) automatically be deemed a part of the Facility and owned by the Agency and be subject to this Agreement and the Company Lease and the lien and security interest of the Agency Mortgage,

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Bondholder,

(iii) not change the nature of the Facility as a qualified "project" as defined in and as contemplated by the Act,

(iv) to the extent required by Section 4.1(e) hereof, be preceded by the furnishing by the Lessee to the Agency, the Bondholder and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Trustee,

(v) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and

(vi) if the estimated cost of such rebuilding, replacement, repair or restoration be in excess of \$500,000, be effected under the supervision of an Independent Engineer.

(d) Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied and may be invested as provided in the Indenture.

(e) The Agency, the Trustee, the Bondholder and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Lessee, the Bondholder and the Trustee.

(f) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to purchase the Facility pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Lessee shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount, if any, which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Facility Realty but which, at the time of such damage or taking, is not part of the Facility nor subject to the Agency Mortgage and is the Lessee's Property.

(h) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 Restrictions on Lessee. The Bonds will be payable by the Agency as to principal, interest and redemption premium, if any, out of the revenue derived from the leasing of the Facility, including all revenues and rental income derived from or in connection with the Facility and moneys received under this Agreement, and the parties hereto understand

that the purchasers of the Bonds will make their purchase in reliance in part upon the credit and financial condition of the Lessee. The Lessee agrees that at all times during the term of this Agreement it will (i) maintain its existence as a limited liability company, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not sell, transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Facility; (iv) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement, (v) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, and (vi) not acquire all or substantially all of the assets of any other entity or person.

The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be duly qualified to do business in the State and that any legal entity succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) not constitute a Prohibited Person.

Section 6.2 Indemnity.

(a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, affiliated companies or affiliated individuals) thereof and persons under the Agency's control or supervision, the Trustee, the Bondholder, the Bond Registrar and the Paying Agents (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising solely and directly from the gross negligence or willful misconduct of such Indemnified Party) arising during the period commencing from November 11, 2003, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), arising from, upon, about or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility or the Project and the marketing, issuance, sale and remarketing of the Bonds for such purpose,

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, furnishing, installation or completion of the Project or the Facility or any part thereof or the effecting of any work done in or about or in connection with the Facility, or any part thereof, or any defects (whether latent or patent) in or in connection with the Facility or any part thereof,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(iv) the execution and delivery by an Indemnified Party, the Lessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of any of their respective obligations under this Agreement, the Indenture or any other Security Document, or other document or instrument 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,

(v) any injury to any Person or the personal property of any Person, in or on the premises of, the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but limited to, failure to comply with the requirements of the City's zoning resolution and related regulations,

(vii) any damage or injury to the person or property of (A) the Lessee or the Sublessee or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee or the Sublessee, or (C) any other Person who may be in or about the premises of the Facility,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined in Section 6.2(d) hereof) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any requirements of the Agency, the Bondholder or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees and expenses, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a).

Such indemnification set forth above shall be binding upon the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof, including any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee 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 nor in any way impair the obligations of the Lessee under this Section 6.2 if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Lessee's 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 Lessee of any such claim or action, (ii) the Lessee shall not have knowledge or notice of such claim or action, and (iii) the Lessee'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 Lessee's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c)(i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials, and (B) except as set forth in a certain Phase I Environmental Assessment, dated November 7, 2003, prepared by Ecosystems Strategies, Inc., a true copy of which has been delivered to the Agency and the Bondholder (the "Audit"), which Audit shall comply with the requirements set forth in Schedule I attached hereto and made a part hereof, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility 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 applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(iii) The Lessee shall comply with, and ensure compliance by, all occupants and users of the Facility with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

(iv) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(v) In the event this Agreement is terminated, the Lessee shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

(d) For purposes of this Section 6.2, the term "Hazardous Materials" includes, without limit, 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 Act, 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.

(e) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision. For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) with respect to the financing of the Project, (3) under the Project Documents, and (4) under Section 6.2(c) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 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 the Indemnified Party relating to the enforcement of the provisions herein specified.

(g) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

Section 6.3 Compensation and Expenses of Bondholder, Trustee, Bond Registrar, Paying Agents and Agency. The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts: (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (iii) the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including reasonable counsel fees, and (iv) the reasonable fees, costs and expenses of the Bond Registrar, and the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency and the Bondholder. The Lessee shall further pay the reasonable fees, costs and expenses of the Agency together with any reasonable fees and expenses and disbursements incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or the Indenture or any other Security Document.

On the Closing Date, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of, an initial financing fee in the amount of \$32,447.00, representing the sum of the Agency financing fee of \$52,625.00, less the application fee of \$2,500, less the maximum fee deduction of \$18,428.00, and plus the first installment of the Agency's administrative servicing fee of \$750. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$750 payable on the anniversary of the Closing Date until the termination of this Agreement.

The provisions of this Section 6.3 shall survive the termination of this Agreement to the extent that amounts are due and unpaid hereunder prior to such termination.

Section 6.4 Retention of Title to Facility; Grant of Easements; Release of Certain Land. The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2 and 7.2 hereof, without the prior written consent of the Lessee, the Bondholder and the Trustee and any purported disposition without such consent shall be void.

Section 6.5 Lessee's Covenant as to Tax Exemption.

(a) The Lessee covenants with the Agency, with the Trustee and with each of the Holders of the Bonds, that it will comply with all of the terms, provisions and conditions set forth in the Tax Compliance Agreement, including, without limitation, the making of any payments and filings required thereunder.

(b) The representations, warranties, covenants and statements of expectation of the Lessee set forth in the Tax Compliance Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(c) If the Bondholder receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond (except a notice and demand based upon the assertion that the Bondholder is a Substantial User or Related Person), an appeal may be taken by the Bondholder at the option of the Bondholder. In either case all expenses of the appeal including reasonable counsel fees shall be paid by the Lessee, and the Bondholder and the Lessee shall cooperate and consult with each other in all matters pertaining to any such appeal, except that the Bondholder shall not be required to disclose or furnish any non-publicly disclosed information, including, without limitation, financial information and tax returns. Before the taking of any appeal, however, the Bondholder shall have the right to require the Lessee to pay the tax assessed and conduct the appeal as a contest for reimbursement.

(d) Not later than one hundred twenty (120) days following a Determination of Taxability, the Lessee shall pay or cause to be paid to the Trustee an amount sufficient, when added to the amount then in the Bond Fund and available for such purpose, to retire and redeem all Bonds then Outstanding, in accordance with Section 2.04(f) of the Indenture.

(e) The obligation of the Lessee to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Agency, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action

required under this Agreement or otherwise shall not relieve the Lessee of its obligation under this Section.

Section 6.6 Financial Statements; No-Default Certificates.

(a) The Lessee agrees to furnish to the Trustee and the Bondholder (and to the Agency but only upon request by the Agency therefor), (i) as soon as available, and in any event within 120 days after the end of each fiscal year of the Sublessee, audited financial statements of Sublessee with the unqualified opinion of independent certified public accountants selected by the Sublessee and acceptable to the Bondholder, which annual financial statements shall include the balance sheet of the Sublessee as at the end of such fiscal year and the related statements of income, retained earnings and cash flows of the Sublessee for the fiscal year then ended, all in reasonable detail and prepared in accordance with generally accepted accounting principles applied on a consistent basis, together with (A) a report signed by such accountants stating that in making the investigations necessary for said opinion they obtained no knowledge, except as specifically stated, of any Default or Event of Default hereunder or under any other Security Document and all relevant facts in reasonable detail to evidence, and the computations as to, whether or not the Sublessee is in compliance with the requirements set forth in Section 6.18 hereof; and (B) a certificate of an Authorized Representative of the Sublessee in the form of Schedule J hereto stating that such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis; (ii) as soon as available and in any event within 90 days after the end of each fiscal quarter of the Sublessee, an unaudited/internal balance sheet and statements of income and retained earnings of the Sublessee as at the end of and for such quarter and for the year to date period then ended, in reasonable detail and stating in comparative form the figures for the corresponding date and periods in the previous year, all prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by an Authorized Representative of the Sublessee, subject to year-end audit adjustments; and accompanied by a certificate of such Authorized Representative in the form of Schedule J hereto stating (A) that such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, (B) whether or not such Authorized Representative has knowledge of the occurrence of any Default or Event of Default hereunder not theretofore reported and remedied and, if so, stating in reasonable detail the facts with respect thereto, and (C) all relevant facts in reasonable detail to evidence, and the computations as to, whether or not the Sublessee is in compliance with the requirements set forth in Section 6.18 hereof; (iii) immediately after the commencement thereof, notice in writing of all litigation and of all proceedings before any governmental or regulatory agency affecting the Lessee of the type described in Section 1.5 hereof or which seek a monetary recovery against the Lessee in excess of \$100,000; (iv) promptly upon knowledge thereof, notice of any loss or destruction of or damage to any of the Facility or the Additional Facility or of any material adverse change in the Facility or the Additional Facility; (v) promptly upon knowledge thereof, notice of any violation by the Lessee of any law, rule or regulation; and (vi) promptly upon knowledge thereof, notice of any material adverse change in the financial or operating condition of the Lessee or any other Guarantor.

(b) The Lessee shall deliver to the Trustee and the Bondholder with each delivery of annual financial statements required by Section 6.6(a)(i) hereof (and to the Agency but only upon request therefor) (i) a certificate of an Authorized Representative of the Lessee as

to whether or not, as of the close of such preceding Fiscal Year of the Lessee, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party, and as to whether or not a Determination of Taxability has occurred, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, he 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 Lessee with respect thereto, which certificate shall be in form attached hereto as Schedule J, (ii) a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect, and (iii) an affidavit of an Authorized Representative of the Lessee swearing that, through the date of such affidavit, all costs for which the Lessee has obtained sales tax exemption by reason of Agency authorization (copies of the invoices for which shall be attached) were proper Project Costs. In addition, upon twenty (20) days prior request by the Agency, the Bondholder or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(c) The Lessee shall immediately notify the Agency, the Bondholder and the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.7 Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee, the Bondholder or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee under this Agreement other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b) hereof, the Lessee within thirty (30) days of receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, the Bondholder and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or

services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency, the Bondholder and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Agreement, of the Agency, the Lessee, the Bondholder or the Trustee or against any of the rentals or other amounts payable under this Agreement, (2) neither the Facility nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Agency, the Bondholder nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Trustee or required by the Bondholder to protect the security intended to be offered by the Indenture and the Agency Mortgage.

Section 6.8 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, including the right to grant the options to purchase herein contained, and that, subject to the terms and provisions of the Agency Mortgage, the Indenture and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Lessee shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Facility, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.9 No Warranty of Condition or Suitability. NEITHER THE AGENCY NOR THE BONDHOLDER HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEE OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY AND THE BONDHOLDER ARE NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY AND THE BONDHOLDER SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO

PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10 Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Rebate Fund, the Bond Fund, the Project Fund or the Renewal Fund upon the expiration or sooner termination of the term of this Agreement as provided in this Agreement, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Bond Registrar, the Paying Agents, the Bondholder and the Agency in accordance with the Indenture and after all rents and all other amounts payable hereunder, shall have been paid in full, and after all amounts required to be rebated to the Federal government pursuant to the Tax Compliance Agreement or the Indenture shall have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

Section 6.11 Reserved.

Section 6.12 Employment Information, Opportunities and Guidelines.

(a) Annually, by August 1 of each year, starting August 1, 2004, during the term of this Agreement and upon the termination of this Agreement, the Lessee 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 C hereto, certified as to accuracy by the Lessee.

(b) The Lessee and the Sublessee shall ensure that all employees and applicants for employment of the Lessee or its Affiliates with regard to the Facility 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 with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Partnership Act of 1998 (P.L. No. 105-220) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee and the Sublessee agree, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Workforce Investment Partnership Act of 1998 (P.L. No. 105-220) 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.

(c) The Lessee (on behalf of itself) hereby authorizes and shall cause the Sublessee to authorize any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or 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 its control and pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Lessee and the Sublessee shall provide to

the Agency any employment information in the possession of the Lessee and the Sublessee which is pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 of 1993 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, 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 Agreement.

(d) The Lessee covenants and agrees that within sixty (60) days after the date of original issuance of the Series 2004 Bonds, an Employment Plan substantially in the format set forth in Schedule E attached hereto (the "Employment Plan") created in connection with the Project shall be submitted to the Agency. Upon receipt thereof, the Agency shall cause the Employment Plan to be listed with (i) the Job Service Division of the New York State Department of Labor; (ii) the administrative entity of the service delivery area created pursuant to the federal Job Training Partnership Act (Pub L. No. 97-300) in which the Project is located; and (iii) the regional office of the New York State Department of Economic Development in the locality in which the Project is located.

The Lessee covenants and agrees that within sixty (60) days after the date of original issuance of the Series 2004 Bonds it shall agree to a meeting between the representative of the local service delivery area, the job service superintendent, the Lessee and the Sublessee for the purpose of supplying information about projected permanent positions created in connection with the Project ("New Employment Opportunities"). The Lessee shall provide notice, in advance, to the Regional Office of the New York State Department of Economic Development of the time and location of such meeting.

The Agency shall maintain the Lessee's Employment Plan on file in its offices as part of the record in connection with the issuance of the Series 2004 Bonds. Such records may be required to be produced for the Commissioner of the New York State Department of Economic Development at anytime.

On or before February 10th of each year, the Agency shall report to the New York State Department of Economic Development regarding the status of the Employment Plan of the Lessee. The Lessee shall provide data on or before January 1 of each year for inclusion in such report. Such data shall include the number of New Employment Opportunities created, the number listed and the number filled, in the form attached hereto as Schedule E. All reports and records required to be submitted pursuant to this Section 6.12 shall be filed with the New York State Department of Economic Development, Regional Technical Services, One Commerce Plaza, Albany, New York 11245.

(e) Nothing in this Section shall be construed to require the Lessee or the Sublessee to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.13 Redemption Under Certain Circumstances; Special Covenants.

(a) Upon the determination by resolution of the members of the Agency that the Lessee is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), the Lessee covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the applicable Redemption Price and any premium thereon together with interest accrued thereon to such Interest Payment Date and all other amounts due hereunder and under the Indenture, provided, however, that if such noncompliance cannot be cured within such period of sixty (60) days with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholder of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee, the Bondholder and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

(b) In the event (x) the Lessee fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 4.5 hereof, or (y) the Lessee, the Sublessee or any Affiliate of either the Lessee or the Sublessee shall be a Prohibited Person, and the Lessee shall fail to cure such noncompliance within 10 days, in the case of clause (x), or 30 days in the case of clause (y), of the receipt by the Lessee of written notice of such noncompliance from the Agency and a demand by the Agency on the Lessee to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Lessee shall pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem all Bonds then Outstanding at the applicable Redemption Price with any premium thereon, together with interest accrued thereon to the date of redemption and all other amounts due hereunder and under the Indenture.

(c) Upon the circumstances set forth in Sections 2.04(c), (d), (e) and (f) of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

(d) Within thirty days following receipt of written notice from the Agency pursuant to this Section 6.13(a) hereof, the Bondholder may, in its sole discretion without any obligation or commitment to do so, enter into an agreement with the Lessee relating to the continuation of the Lessee's obligations under this Agreement. If the Bondholder so elects to

enter into such agreement, the Agency agrees to cooperate with the Bondholder to assign such provisions of this Agreement and the other Security Documents with respect to its security interest in the Mortgaged Property and the Trust Estate to the Bondholder as the Bondholder may reasonably request in order to permit the Bondholder to enter into an amendment and restatement of this Agreement with the Lessee. On or prior to the date of such assignment, (i) the Series 2004 Bonds shall be cancelled, (ii) all obligations of the Agency under the Security Documents shall terminate and be cancelled, (iii) the Agency shall be deemed to be a third-party beneficiary of the provisions of Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty, exclusive of the Agency's leasehold interest therein), 6.2, 6.3, 8.5 and 9.17 hereof as such provisions shall exist prior to the date of any such assignment, and (iv) no amendments or modifications to any part of the amended agreement shall in any way impair or limit any obligations to the Agency by the Lessee pursuant to this Agreement existing prior to such assignment or impair or limit any of the Agency's Reserved Rights.

Section 6.14 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as necessary for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder or under any other Bond Security Document.

Section 6.15 Recording and Filing. This Agreement as originally executed or a memorandum thereof shall be recorded by the Lessee subsequent to the recordation of the Agency Mortgage and the Indenture, in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof. The security interest of the Agency created herein and the assignment of such security interest to the Trustee shall be perfected by the filing of financing statements by the Lessee which fully comply with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the Register of The City of New York. The Lessee shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interest created by this Agreement, to the end that the rights of the Agency, the Bondholder and the Trustee in the Facility shall be fully preserved as against creditors or purchasers for value from the Agency or the Lessee. The Trustee is authorized, if permitted by applicable law, to file one or more Uniform Commercial Code financing statements disclosing any security interest in the Facility, this Agreement, and the sums due under this Agreement. The Lessee agrees to perform all acts (including the payment of all costs) necessary in order to enable the Agency to comply with Section 7.08 of the Indenture. The Trustee will promptly notify the Lessee of any such filing.

The Lessee will, within ten (10) days after notice of any such filing, recording or other act, cause there to be furnished to the Agency and the Trustee an Opinion of Counsel as to the adequacy and reciting the details of such filing, recording or other act and specifying any re-recording or refiling to be effected in the future with respect to this Agreement, the Indenture, any Security Document or financing statements.

Section 6.16 Right to Cure Agency Defaults. The Agency hereby grants the Lessee full authority for account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Lessee, in the name and stead of the Agency, with full power of substitution.

Section 6.17 Current Facility Equipment Description. The Lessee covenants and agrees that throughout the term of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of the Appendices to this Agreement, the Agency Mortgage and the Indenture to be an accurate and complete description of all current items of Facility Equipment and sufficient, in the judgment of the Bondholder, who shall confirm such sufficiency in writing to the Trustee, for the creation and perfection of a security interest in each such item of property under the New York State Uniform Commercial Code-Secured Transactions. To this end, the Lessee covenants and agrees (i) that no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of Facility Equipment, (ii) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (iii) that no item of Facility Equipment shall be delivered and installed at the Facility Realty as part of the Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in the Appendices attached as part of this Agreement, the Agency Mortgage and the Indenture and the Lessee shall from time to time prepare and deliver to the Agency and the Trustee supplements to such Appendix in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties and, at the Agency's, the Bondholder's or the Trustee's request, duly recorded by the Lessee, and, at the Agency's request, additional financing statements with respect thereto shall be duly filed by the Lessee.

Section 6.18 Covenants of Lessee

(a) The Lessee shall cause the Sublessee to maintain its ratio of Debt (as defined below) to Tangible Net Worth (as defined below) at not more than (i) 4.50 to 1.00 for its Fiscal Year ending November 30, 2004, (ii) 4.00 to 1.00 for its Fiscal Year ending November 30, 2005 and (iii) 3.50 to 1.00 for its Fiscal Year ending November 30, 2006 and each Fiscal Year thereafter. "Debt" shall mean (i) all items of indebtedness or liability which in accordance with generally accepted accounting principles or federal tax law would be included in determining total liabilities as shown on the liabilities side of a balance sheet, (ii) indebtedness secured by any mortgage, pledge, lien or security interest existing on property owned by the Sublessee, whether or not the indebtedness secured thereby shall have been assumed, and (iii) guaranties and endorsements (other than for purposes of collection in the ordinary course of business) by the Sublessee and other contingent obligations of the Sublessee in respect of, or to purchase or otherwise acquire, indebtedness of others. "Tangible Net Worth" means the excess of: (i) the tangible assets of the Sublessee, which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over (ii) all Debt of the Sublessee; provided, however, that (i) inventory shall be taken into account on the basis of the cost (determined on a first-in, first-out basis) or current market value, whichever is lower, (ii) in no event shall there be included as such tangible assets patents, trademarks, trade names,

copyrights, licenses, good will, advances or loans to, or receivables from, directors, officers, employees or affiliates, prepaid or intangible assets, amounts relating to covenants not to compete, pensions assets, deferred charges or treasury stock or any securities or Debt of the Sublessee or any other securities unless the same are readily marketable in the United States of America or entitled to be used as a credit against federal income tax liabilities, (iii) securities included as such tangible assets shall be taken into account at their current market price or cost, whichever is lower, and (iv) any write-up in the book value of any assets shall not be taken into account.

(b) The Lessee shall cause the Sublessee to maintain for each Fiscal Year its Debt Service Coverage Ratio (as defined below) at not less than 1.25 to 1.00. "Debt Service Coverage Ratio" means the ratio of (i) the Sublessee's Cash Flow Available for Debt Service (as defined below) to (ii) the Sublessee's Debt Service (as defined below). "Cash Flow Available for Debt Service" of the Sublessee means, with respect to the applicable period of determination, the Sublessee's income, plus interest expense, depreciation, amortization and other non-cash charges. "Debt Service" of the Sublessee means, with respect to the applicable period of determination, the aggregate of (i) interest expense of the Sublessee, (ii) all installments of principal on Debt of the Sublessee that are due on demand or during the period of determination, (iii) all installments of rent under capitalized lease obligations (to the extent not already accounted for in computation of net income or Debt) of the Sublessee that are due on demand or during the period of determination and (iv) distributions and dividends to stockholders and advances to affiliates of the Sublessee during the period of determination.

(c) The Lessee shall cause the Sublessee to maintain its Tangible Net Worth at not less than (i) \$3,000,000 during the Fiscal Year ending November 30, 2004, (ii) \$3,500,000 during the Fiscal Year ending November 30, 2005, (iii) \$4,000,000 during the Fiscal Year ending November 30, 2006, and (iv) \$4,500,000 during the Fiscal Year ending November 30, 2007.

(d) Neither the Lessee nor the Sublessee will adopt, permit or consent to any material change in accounting principles other than as required by generally accepted accounting principles. Neither the Lessee nor the Sublessee will adopt, permit or consent to any change in its fiscal year.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any rental that has become due and payable by the terms of Section 3.3 hereof which results in a default in the due and punctual payment of the principal of, redemption premium, if any, or interest on any Bond;

(b) (i) Failure of the Lessee to pay any amount (except as set forth Section 7.1(a) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.4 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Bondholder;

(ii) Failure of the Lessee to pay any amount (except as set forth Section 7.1(a) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.5, 6.1, 6.6, 6.7 and 6.18 hereof;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Bondholders, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee 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) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of their respective assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee shall be entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee shall 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; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made (i) by or on behalf of the Lessee in the application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Series 2004 Bonds for approval of the Project or its financing, or (ii) by the Lessee herein or in any of the other Security Documents, or (iii) in the Tax Compliance Agreement or (iv) in any report, certificate, financial statement or other instrument furnished by any Guarantor pursuant hereto or any of the foregoing, shall in any case prove to be knowingly false, misleading or incorrect in any material respect as of the date made;

(g) the occurrence of a default or an event of default under any instrument, agreement or other document evidencing, relating to or securing any indebtedness or other monetary obligation of the Lessee or the Sublessee;

(h) any Guarantor shall repudiate, purport to revoke or fail to perform such Guarantor's obligations under the Guaranty Agreement or the death of any Individual Guarantor;

(i) ownership of the Lessee or Sublessee changes during the period that the Bonds are outstanding (the Lessee hereby acknowledges that the Bondholder has made its decision to acquire the Bonds based upon the management expertise of the current owners and their ownership of the Lessee and the Sublessee); or

(g) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

Section 7.2 Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred, the Agency, or the Trustee or the Bondholder where so provided, may, take any one or more of the following remedial steps:

(a) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with any premium and the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under Section 7.1(d) or (e) hereof, all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement, together with any premium and the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Agency, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(b) The Agency, with the prior written consent of the Trustee, or the Trustee may re-enter and take possession of the Facility, pursuant to due process of law, without terminating this Agreement, and sublease the Facility for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the sublessee in such subletting, and the rents and other amounts payable by the Lessee hereunder;

(c) The Agency, with the prior written consent of the Trustee, or the Trustee may terminate this Agreement, and exclude the Lessee from possession of the Facility, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate. No such termination of this Agreement shall relieve the Lessee of its liability and obligations hereunder incurred prior to such termination (subject to the survival of certain obligations of the Lessee as provided in Section 8.4 hereof) and such liability and obligations shall survive any such termination;

(d) The Agency or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement;

(e) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder and otherwise exercise any rights and remedies under any Bond Security Document; and

(f) The Agency, without the consent of the Trustee or any Bondholder, may proceed to enforce the Agency's Reserved Rights by (i) an action for damages, injunction or specific performance, and/or (ii) conveying all of the Agency's right, title and interest in the Facility to the Lessee which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, a termination of lease as required by law, and the Lessee, to the extent permitted by law, hereby waives delivery and acceptance of such termination of lease as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination of lease and/or (iii) requiring the surrender by the Lessee to the Agency of the Sales Tax Letter for suspension or cancellation.

In the event that the Lessee fails to make any rental payment required in Section 3.3 hereof, the installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid.

No action taken pursuant to this Section 7.2 (including repossession of the Facility or termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, all of which shall survive any such action.

Section 7.3 Reletting of Facility. If the right of the Lessee to the occupancy, use and possession of the Facility shall be terminated in any way, the Agency may relet the same or any part thereof for the account and benefit of the Lessee for such rental terms to such Persons and for such period or periods as may be fixed and determined by the Agency after notice to and approval by the Bondholders; *provided* that such occupant or tenant is not a Prohibited Person, and *provided*, further, that such reletting shall not adversely affect the tax-exempt status of the Bonds. The Agency and the Trustee shall not otherwise be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Lessee, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Lessee, after paying the expenses of reletting and collection, then the Lessee hereby agrees to pay and satisfy any such deficiency if, as and when the same exists; provided, however, any excess rentals from any such reletting shall be credited to any rental due or to become due by the Lessee.

Section 7.4 Remedies Cumulative. The rights and remedies of the Agency or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Agency or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or

other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated, or of the right to recover possession of the Facility by reason thereof.

Section 7.5 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, 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 party making such waiver. No course of dealing between the Agency and/or the Trustee and the Lessee or any delay or omission on the part of the Agency and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Lessee hereby waives the benefit and advantage of, and covenants not to assert against the Agency or the Trustee, any valuation, inquisition, stay, appraisement, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 7.6 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then, and in every such case, the Agency, the Trustee and the Bondholder shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 7.7 Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Agreement, and the Agency, the Trustee or the Bondholder should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Security Document, the Lessee agrees that it will on demand therefor pay to the Agency, the Trustee or the Bondholder the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

Section 7.8 Late Fees. Any rental payment required to be paid hereunder and not paid by the Lessee on the due date thereof shall, to the extent permissible by law, bear a late charge equal to the lesser of five cents (\$.05) per dollar of the delinquent amount or the lawful maximum, and the Lessee shall be obligated to pay the same immediately upon receipt of the Bondholder's written invoice therefor.

ARTICLE VIII OPTIONS

Section 8.1 Options.

(a) The Lessee has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds, all in accordance with and subject to the terms of the Indenture. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption and all other amounts due the Bondholder hereunder or under the Indenture. In the event the Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Bondholder, the Trustee, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Compliance Agreement.

(b) The Lessee shall have the option to purchase the Facility commencing on that date upon which the Bonds may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture.

(c) The Lessee shall also have the option to purchase the Facility on any date during the term of this Agreement within ninety (90) days of the occurrence of any of the following events:

(i) The Facility shall have been damaged or destroyed to such extent that as evidenced by a certificate of an Independent Engineer filed with the Agency, the Bondholder and the Trustee (A) the Facility cannot be reasonably restored within a period of one year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Lessee is thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one year from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Lessee being thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Agency, the Bondholder and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Lessee, this Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein or unreasonable burdens or excessive liabilities are imposed upon the Lessee by reason of the operation of the Facility.

(d) The Lessee, in purchasing the Facility pursuant to Section 8.1(c) hereof, shall file with the Agency, the Bondholder and the Trustee the certificate prescribed by Section 8.1(c)(i) or (ii) hereof together with a certificate of an Authorized Representative of the Lessee stating that, as a result of the occurrence of the event giving rise to the exercise of such option to purchase, the Lessee has discontinued, or at the earliest practicable date will discontinue, the operation of the Facility for its intended purposes, and in the case of Section 8.1(b) or 8.1(c) hereof, the Lessee shall pay to the Trustee as the purchase price, in legal tender, advance rental payments, for deposit in the Bond Fund (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(i) an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds;

(ii) reasonable expenses of redemption, the fees and expenses of the Agency, the Bondholder, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the Indenture;

(iii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Compliance Agreement;

(iv) all other amounts due to the Bondholder hereunder and under the Indenture; and

(v) one dollar.

(e) Upon the payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption), the Lessee shall have the option to purchase the Agency's leasehold interest in the Facility and shall exercise such option by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days prior to the exercise of such option, which notice shall set forth a requested closing date for the termination of the Agency's leasehold interest in the Facility which shall be not later than sixty (60) days after the date of delivery of such notice, and (2) paying on such closing date a purchase price equal to the sum of one dollar, the fees and expenses of the Agency, the Bondholder, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement or the Indenture, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Compliance Agreement. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

(f) The Lessee shall not, at any time, assign or transfer its option to purchase the Agency's leasehold interest in the Facility as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 9.3 hereof without the prior written consent of the Agency, the Bondholder and the Trustee.

Section 8.2 Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's leasehold interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the advance rental payments required pursuant to Section 8.1(a), deliver or cause to be delivered to the Lessee a release, satisfaction or termination of the mortgage lien and security interest of the Agency Mortgage on the Facility and termination of this Agreement (subject to the survival of certain obligations as provided in Section 8.4 hereof), and the Company Lease, subject to the following: (1) the nature, quality and extent to which leasehold title to said property shall have been vested in the Agency; (2) any Permitted Encumbrances to which title to said property was subject when the leasehold interest was conveyed to the Agency; (3) any liens, easements, security interests, claims, charges and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (4) any liens, security interests, claims, charges and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (5) any liens for taxes or assessments not then delinquent; and (6) the rights, if any, of any condemning authority, and (c) documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than the Agency's Reserved Rights), or any insurance proceeds (other than liability insurance) or condemnation award, with

respect to the Facility. Concurrently with the delivery of such termination documents, there shall be delivered by the Agency to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Bonds.

Upon the delivery of the termination documents referred to above pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty, exclusive of the Agency's leasehold interest therein), 6.2, 6.3, 8.5 and 9.17 hereof shall survive such termination.

Section 8.3 Reserved.

Section 8.4 Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Bondholder, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Compliance Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty, exclusive of the Agency's leasehold interest therein), 6.2, 6.3, 8.5 and 9.17 hereof. Notwithstanding any other provision of this Agreement to the contrary, on or after the Abatement Termination Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Lessee shall terminate this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Security Documents, and thereupon the Lessee shall accept such termination of lease and Company Lease and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty, exclusive of the Agency's leasehold interest therein), 6.2, 6.3, 8.5, and 9.17 hereof. In the event the Lessee does not terminate this Agreement and the Company Lease within such 45 day period, then, commencing on the 46th day after transmittal of the notice requesting termination as above provided, the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have terminated this Agreement and the Company Lease in accordance with the provisions hereof.

Section 8.5 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties to this Agreement that the Agency is issuing the Series 2004 Bonds to finance part of the costs of the Project and is entering into this Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of the Project and occupancy of the Facility Realty by the Lessee and the Lessee thereafter sells all or substantially all of the Facility or causes all or substantially all of the

Facility to be sold within two years of the exercise of such option to terminate this Agreement, the Lessee shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits as defined below.

(ii) If there shall occur a Recapture Event after the date on which the Project shall have been substantially completed, which shall be that date as stated in the certificate of the Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof, but not later than January 1, 2005 (the "Operations Commencement Date"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the amounts set forth in this paragraph (ii) of Section 8.5.

1. one hundred percent (100%) of the Benefits if the Recapture Event occurs within the first six (6) years after the Operations Commencement Date;
2. eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;
3. sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;
4. forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date;
5. twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

The term "Benefits" shall mean, collectively,

1. all real estate tax benefits which have accrued to the benefit of the Lessee during such time as the Agency was the owner of a leasehold interest in the Facility Realty by reason of the Agency's leasehold interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee would have been required to pay during the lease term had the City determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such lease term exclusive of the Agency's leasehold interest therein; and
2. all miscellaneous benefits derived from the Agency's participation in the financing of the costs of the Project including, but not limited to, exemption from mortgage recording tax, transfer tax, sales or use tax, and filing and recording fees.

The term "Recapture Event" shall mean any of the following events:

1. The Lessee or the Sublessee shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City);

2. The Lessee shall have leased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;

3. The Lessee or the Sublessee shall have effected substantial changes in the scope and nature of the Lessee's or the Sublessee's operations at the Facility;

4. The Lessee or the Sublessee shall have transferred all or substantially all of its employees to a location outside of the City; or

5. The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, or (iii) a matter to which the Agency shall have given its express prior written consent.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms thereof. The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

(c) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the City's Department of Finance on delinquent payments until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

(e) The Lessee covenants and agrees to furnish the Agency with written notification upon any such disposition of the Facility or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale. The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

ARTICLE IX MISCELLANEOUS

Section 9.1 Indenture; Amendment. The Lessee shall have and may exercise all the rights, powers and authority stated to be in the Lessee in the Indenture and in the Bonds,

and the Indenture and the Bonds shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority so stated to be in the Lessee or otherwise adversely affects the Lessee without the written consent of the Lessee.

Section 9.2 Reserved.

Section 9.3 Assignment or Sublease. The Lessee may not at any time assign or transfer this Agreement, or sublet the whole or any part of the Facility.

The Lessee shall deliver to the Agency on January 1, 2005 and every January 1 thereafter for the term of the Project a completed subtenant survey in the form attached hereto as Schedule D.

Section 9.4 Priority of Agency Mortgage. Pursuant to the Agency Mortgage, the Agency will grants a mortgage lien on and security interest in the Facility, and pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other moneys receivable under this Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of, and interest on the Bonds, and this Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture, and such mortgage liens, security interests, pledges and assignments thereunder.

Section 9.5 Benefit of and Enforcement by Bondholders. The Agency and the Lessee agree that this Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Lessee as set forth in this Agreement are hereby declared to be for the benefit of the Bondholder and may be enforced as provided in Article VIII of the Indenture on behalf of the Bondholder by the Trustee.

Section 9.6 Amendments. This Agreement may be amended only with the concurring written consent of the Trustee and the Bondholder given in accordance with the provisions of the Indenture and only if the Lessee shall assume in writing the obligations of such amended Agreement; provided, however, that any amendment of Section 4.3 hereof shall not require the consent of the Trustee or the Bondholder.

Section 9.7 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, New York, Attention: Executive Director, with a copy to the General Counsel of the Agency at the same address, if to the Lessee, Palm III, LLC, 255 Randolph Street, Brooklyn, New York 11237, Attention: Edmund Mei, Ron Palmerick and Richard Minieri, if to Bondholder, GE Capital Public Finance, Inc., 8400 Normandale Lake Boulevard, Suite 470, Minneapolis, Minnesota 55437, Attention: Vice President – Risk Management, and if to the Trustee, to Wachovia Bank, National Association, One Penn Plaza, New York, New York 10119, Attention: Corporate Trust Department – NY 4040. A copy of each notice to the Lessee also shall be required to be sent to the Lessee's counsel, with a copy to Mark L. Goldman, Esq., Goldman & Goldman, 585 Stewart Avenue, Suite 750, Garden City, New York 11530. The Agency, the Lessee, the Bondholder and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be

sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

Section 9.8 Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than any Security Documents), between the Agency and the Lessee relating to the Facility.

Section 9.9 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 9.10 Inspection of Facility. The Lessee will permit the Trustee or the Bondholder, or their respective duly authorized agents, at all reasonable times upon reasonable prior written notice to enter upon the Facility Realty and to examine and inspect the Facility and exercise their rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Lessee will further permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable prior written notice to enter upon the Facility but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee. Finally, upon request of the Bondholder, the Lessee will permit any officer, employee, attorney or accountant for the Bondholder to audit, review, make extracts from, or copy any and all corporate and financial books, records and properties of the Lessee at all times during ordinary business hours, and to discuss the affairs of the Lessee with any of its directors, officers, employees or agents.

Section 9.11 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 9.12 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Lessee and their respective successors and assigns. Time is of the essence.

Section 9.13 Reserved.

Section 9.14 Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard to conflicts of laws principles thereof.

Section 9.15 Investment of Funds. Any moneys held as part of the Rebate Fund, the Project Fund, the Bond Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Lessee, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Compliance Agreement). Neither the Agency nor the Trustee nor any of their members, directors, officers,

agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss, fee, tax or other charge arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 9.16 Investment Tax Credit. It is the intention of the parties that any investment tax credit or comparable credit which may ever be available accrue to the benefit of the Lessee and the Lessee shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code as may be necessary to entitle the Lessee to have such benefit.

Section 9.17 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 the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 9.18 Non-Discrimination.

(a) At all times during the construction, maintenance and operation of the Facility, the Lessee and the Sublessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee and the Sublessee shall use their respective best efforts to ensure that employees and applicants for employment with the Lessee and the Sublessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee and the Sublessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee and the Sublessee, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee and the Sublessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency, the Lessee and the Sublessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

Section 9.19 No Recourse under This Agreement or on Bonds. All 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, shareholder, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments of, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, shareholder, employee or agent of the Agency or any natural person executing the Bonds.

Section 9.20 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 date of original issuance and delivery of the Series 2004 Bonds.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: *B. Bassier Bigio*
Name: Barbara Bassier-Bigio
Title: Executive Director

PALM III, LLC,
as Lessee

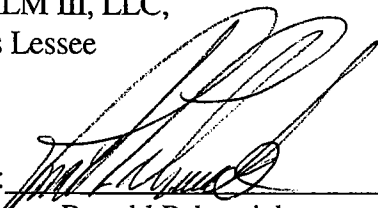
By: _____
Name: Ronald Palmerick
Title: Member

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has caused its name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

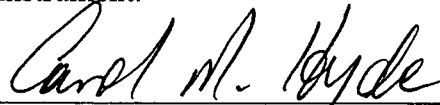
By: _____
Name: Barbara Basser-Bigio
Title: Executive Director

PALM III, LLC,
as Lessee

By:  _____
Name: Ronald Palmerick
Title: Member

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

On the 29th day of June, in the year two thousand four, before me, the undersigned, a Notary Public in and for said State, personally appeared Barbara Bassar-Bigio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2007

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

On the 29th day of June, in the year two thousand four, before me, the undersigned, a Notary Public in and from said State, personally appeared Ronald Palmerick, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.



Notary Public

JEREMY S. BERLIN
Notary Public, State of New York
No. 02BE6064215
Qualified in Queens County
Commission Expires September 24, 2005

R764664.4

APPENDICES

DESCRIPTION OF PROJECT

The acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land located at 47-40 Metropolitan Avenue, Queens, New York 11385, for use by Aabco Sheet Metal Co., Inc. in manufacturing HVAC sheet metal systems and accessories for the building and construction industry.

DESCRIPTION OF FACILITY REALTY

AMENDED 6/25/04

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northeasterly side of Woodward Avenue distant 81 feet 0-1/2 inches Northwesterly from the corner formed by the intersection of the Northwesterly side of Flushing Avenue with the Northeasterly side of Woodward Avenue;

RUNNING THENCE Northwesterly along the Northeasterly side of Woodward Avenue, 231 feet 11 inches;

THENCE Northeasterly along a line forming an exterior angle of 90 degrees 01 minutes 52.7 seconds with the last mentioned course, 245 feet 7-1/4 inches to the Southerly side of Metropolitan Avenue;

THENCE Northeasterly along the Southerly side of Metropolitan Avenue, forming an exterior angle of 56 degrees 37 minutes 15.4 seconds with the last mentioned course, 50 feet 1 inch to an angle point;

THENCE CONTINUING Northeasterly along the Southerly side of Metropolitan Avenue, forming an exterior angle of 180 degrees 29 minutes 48 seconds with the last mentioned course, 169 feet 8-7/8 inches to the land now or formerly of Mott;

THENCE Southeasterly along the land now or formerly of Mott and on a line forming an interior angle of 108 degrees 17 minutes 24 seconds with the Southerly side of Metropolitan Avenue, 53 feet 8-1/4 inches;

THENCE Southeasterly along the land now or formerly of Bedell on a line forming an interior angle of 196 degrees 10 minutes 14 seconds with the last mentioned course, 123 feet 6-5/8 inches to a point;

RUNNING THENCE Southwesterly along a line forming an interior angle of 81 degrees 59 minutes 30 seconds with the last mentioned course, 212 feet 4-3/4 inches to a point;

RUNNING THENCE still Southwesterly at right angles with the Northwesterly side of Woodward Avenue, 101 feet 2-1/4 inches to the Northeasterly side of Woodward Avenue, the point or place of BEGINNING.

R764664.4

DESCRIPTION OF FACILITY EQUIPMENT

None.

[Form of Letter of Authorization for Sales Tax Exemption]

[Letterhead of Agency]

June ____, 2004

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2004 Aabco Sheet Metal Co., Inc. 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 issuance of its bonds or notes, is exempt from the imposition of any New York State or City of New York 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 a resolution adopted by the Agency on April 19, 2004 (the "Bond Resolution"), and a Lease Agreement, dated as of June 1, 2004 (the "Lease Agreement"), between the Agency and Palm III, LLC, a New York limited liability company (the "Lessee"), the Agency has authorized the Lessee to act as its agent to the acquisition, renovation, furnishing and equipping of a manufacturing facility in the City of New York (the "Facility") consisting of acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land located at 47-40 Metropolitan Avenue, Queens, New York 11385, for use by Aabco Sheet Metal Co., Inc. (the "Sublessee") in manufacturing HVAC sheet metal systems and accessories for the building and construction industry (the Facility and acquisition, renovation, furnishing and equipping thereof and the costs related thereto are herein referred to as the "Project"), and by leasing the Project from the Lessee, for subsequent sublease to the Lessee for further sub-sublease to the Sublessee.

3. In connection with such resolution and the Lease Agreement and pursuant to the authority therein granted, the Agency authorizes the Lessee to act as its agent in connection with the acquisition, construction and equipping of the Project and authorizes the Lessee to use this letter as its agent only for the payment of the costs of such acquisition, renovation, furnishing and equipping of the Project, all as set forth in Exhibit A hereto.

4. As agent for the Agency, the Lessee agrees that each contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency for the acquisition, construction and equipping of the Project shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Palm III, LLC, a limited liability company organized and existing under the laws of the State of New York (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 acquisition, renovation, furnishing and equipping of a manufacturing facility (the "Facility") consisting of the acquisition, renovation, furnishing, and equipping of an approximately 75,000 square foot building located upon an approximately 85,000 square foot parcel of land located at 47-40 Metropolitan Avenue, Queens, New York 11385, for use by Aabco Sheet Metal Co., Inc. in manufacturing HVAC sheet metal systems and accessories for the building and construction industry (the Facility and acquisition, renovation, furnishing and equipping thereof and the costs related thereto are herein referred to as the "Project"), for lease to the Agency and sublease to the Agent for use and occupancy by the Agent. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

5. The acquisition, construction and equipping of facilities, capital improvements, systems, trade fixtures, tangible personal property, building materials, machinery and equipment 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) such materials and capital improvements are separately identifiable property of the Lessee leased to Agency, (ii) any capital machinery, building materials and equipment shall have a useful life of one year or more, and shall solely be for the use of the Lessee at the Facility, and for no other entity and at no other location, and be effected by and at the sole cost of the Lessee, and (iii) the cost of such property is purchased or paid from, or reimbursed with, in whole, the proceeds of Bonds issued by the Agency for the financing of the Project.

6. The liability of the Agency under any contract, agreement, invoice, bill or purchase order entered into by the Lessee as agent for the Agency hereunder shall be limited only

to the proceeds of the bonds of the Agency as may be used to finance the cost of the Project; and the Agency shall have no liability or performance obligations under any such contract, agreement, invoice, bill or purchase order. In the event that such bonds are not issued or the proceeds of such bonds are insufficient to pay or reimburse all or any part of such costs, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Lessee shall be the sole party liable thereunder.

7. By execution by the Lessee of its acceptance of the terms of this letter, the Lessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of this letter by the Lessee is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the termination of the Lease Agreement, and (ii) the completion of the Project as provided in the Lease Agreement, all vendors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases of, and improvement and installation contracts relating to, the Project property, to the extent effected by the Lessee (or by a contractor or subcontractor engaged by the Lessee) as agent for the Agency, are exempt from all New York State and City of New York sales and use taxes.

9. The Agency hereby further appoints the Sublessee as its agent for the purpose of using the Facility.

The signature of a representative of the Lessee where indicated below will indicate that the Lessee have accepted the terms hereof.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Barbara Basser-Bigio
Executive Director

ACCEPTED AND AGREED TO BY:

PALM III, LLC

By: _____
Name: Ronald Palmerick
Title: Member

EXHIBIT A

The acquisition of building materials and fixtures for incorporation within the building located at 47-40 Metropolitan Avenue, Queens, New York 11385.

SCHEDULE A

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS
REQUIRED BY SECTION 2.2(b) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Palm III, LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Lease Agreement, dated as of June 1, 2004 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project was _____;

(ii) except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, services, machinery, equipment, materials and supplies used therefor have been paid for or arrangement for payment, as described below, has been made **[insert details of payment arrangement, if applicable]**;

(iii) all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid;

(iv) the Agency has good and valid marketable leasehold title to the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

(v) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes;

(vi) \$_____ represents the amount required for the payment of remaining Project costs;

(vii) this Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate;

(viii) attached hereto are (a) a certificate of the general contractor for the Project to the effect that all subcontractors, supplies, material and laborers have been paid all sums done and owing to them, (b) releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project and whose contract for work or materials was in excess of \$50,000, (c) a permanent certificate of occupancy, (d) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Lease Agreement, and (e) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 of the Lease Agreement in respect of the Facility have been paid in full.

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

PALM III, LLC,
as Lessee

By: _____
Name: Ronald Palmerick
Title: Member

SCHEDULE B

ida

New York City
Industrial Development Agency**IDA BENEFITS REPORT**For benefits utilized during the period 7/1/___ - 6/30/___
DUE BY FACSIMILE: July __, 20__

In order to comply with the New York State Comptroller's Office reporting requirements, IDA must require all projects receiving sales tax benefits during the period of July 1, ____ - June 30, _____ to complete this Benefits Report.

COMPANY NAME: _____

If your company is entitled to a benefit during the period of July 1, 2004 – June 30, 2004, but has not utilized the benefit during that period, please report \$0.00 where applicable.

If your company is not entitled to these benefits or if you have reached your maximum benefit prior to the period of July 1, 2004 – June 30, 2004, please check the not applicable portion of the form.

SALES TAX BENEFITS

not applicable, no benefit utilized this period ☐ not applicable, maximum benefit reached ☐
not applicable, project not eligible for benefit ☐

Total Purchase Costs: \$ _____

Total Sales Tax (purchase cost x 8.25%): \$ _____

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

Signature: _____

Date: _____

Phone Number _____

If you have any questions, please call the IDA Compliance Helpline at (212) 312-3963.

PLEASE FAX YOUR RESPONSE TO: (212) 312-3918

SCHEDULE C**ida**New York City
Industrial Development Agency**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 July 10, ____.

Company: _____
Address: _____
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 through the term of this transaction.

Name of Company _____

Principal/Owner/Chief Financial Officer _____ (please print)

Signature _____ **Date** _____

*If you have any questions, please call the IDA Compliance Helpline at (212) 312-3963.
 Please fax or mail the completed form to: (212) 312-3918.*

*New York City Industrial Development Agency
 110 William Street, New York, NY 10038
 Attention: Compliance Unit*

Schedule D

ida

New York City
Industrial
Development Agency**IDA SUBTENANT SURVEY****DUE DATE: January 2, ____**

Company: _____

Address: _____

In order to verify compliance your IDA Transaction Documents, please complete the information requested below for each and every subtenant occupying space in your facility as of January 1, ____.

TOTAL BUILDING SQUARE FOOTAGE OF _____ SQ. FT.

Subtenant	Square Footage	Beginning Date	End Date	Related Company (Yes or No)
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I, the undersigned hereby certify to the best of my knowledge and belief, that the information reported above is true and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____

· 110 William Street, New York, NY 10038· 212.619.5000

SCHEDULE E

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed</u> ¹	<u>Number Filled</u> Job Service Division Applicants	Job Training Partnership Act eligible Persons
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R764664.1

SCHEDULE F

FORM ST-340

New York State Department of Taxation and Finance



**Annual Report of Sales and Use Tax Exemptions
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					
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): _____ / _____
 Years Months

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		Title of person signing
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 (CML) 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) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include, on Form ST-340, information obtained from such contractors, subcontractors, consultants, and agents, as described below.

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.

When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Internet access: <http://www.tax.state.ny.us>

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence, W A Harriman Campus, Albany NY 12227.

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 (e.g. attorney or accountant) authorized by the IDA agent/project operator to submit this 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 the 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 agent 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 any bond 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 on 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 was 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 project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter '0') as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

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 other 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, Bldg 8 Rm 658, W A Harriman Campus, Albany NY 12227.

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

SCHEDULE G

SURVEY REQUIREMENTS

The survey called for in the attached Lease Agreement must be prepared by a Registered Engineer or Surveyor and must comply with the following:

- A. The survey must be an Urban ALTA/ACSM Land Title Survey, meeting the Minimum Standard Detail Requirements and Classifications of ALTA/ACSM Land Title Surveys as adopted by American Land Title Association and American Congress on Surveying & Mapping in 1999.
- B. The survey must be completed and dated within six (6) months prior to closing.
- C. The survey must include the following certification and must include the original signature and seal of the surveyor:

To GE Capital Public Finance, Inc., Palm III, LLC and [Title Company]:

This is to certify that this map or plat and the survey on which it is based were made (i) in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 1999, and includes Items 1, 2, 3, 4, 6, 7(a), 7(b), 7(c), 8, 9, 10 and 11 of Table A thereof, and (ii) pursuant to the Accuracy Standards (as adopted by ALTA, NSPS and ACSM and in effect on the date of this certification). The undersigned further certifies that proper field procedures, instrumentation, and adequate survey personnel were employed in order to achieve results comparable to those outlined in the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements which Control Land Boundaries for ALTA/ACSM Land Title Surveys.

Date:

(signed)

(seal)

Registration No.

- D. The following items are to be included from Table A of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys:
 - 1. Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.
 - 2. Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).
 - 3. Flood zone designation (with proper annotation based on Federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only).
 - 4. Land area as specified by the client (indicate total acreage and square footage).
 - 5. Identify, and show if possible, setback, height and bulk restrictions of record or disclosed by applicable zoning or building codes (in addition to those recorded in subdivision maps). If none, so state.

6.
 - (a) Exterior dimensions of all buildings at ground level
 - (b) Square footage of (1) exterior footprint of all buildings, or (2) gross floor area of all buildings, at ground level
 - (c) Height of all buildings above grade at a defined location.
 - (d) Required number of parking spaces.
 7. Substantial, visible improvements (in addition to buildings) such as signs, parking areas or structures, swimming pools, etc.
 8. Parking areas and, if striped, the number of striped parking spaces, the type (e.g., handicapped, motorcycle, regular, etc.) and the number of required parking spaces.
 9. Indication of access to a public way such as curb cuts, driveways marked.
 10. Location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information) (for example):
 - (a) railroad tracks and sidings;
 - (b) manholes, catch basins, valve vaults or other surface indications of subterranean uses;
 - (c) wires and cables (including their function) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crosswires or overhangs affecting the surveyed premises; and
 - (d) utility company installations on the surveyed premises.
 11. Significant observations not otherwise disclosed
- E. The following additional items must be included on the survey:
1. A narrative legal description which exactly matches the title commitment;
 2. Names of all streets abutting the premises;
 3. Distance to nearest intersection of streets and names of streets;
 4. Street address of the premises.
 5. Clear indication of any encroachments or protrusions and the exact measurements of the distance to lot lines, buildings, easement lines, etc.

SCHEDULE H

BONDHOLDER

INSURANCE REQUIREMENTS:

HAZARD INSURANCE:

Evidenced on Form Acord 27 - Evidence of Property Insurance, naming GE Capital Public Finance, Inc., its successors and/or assigns, as Loss Payee and Mortgagee as respects the subject property.

Perils: Fire and Extended coverage, vandalism and malicious mischief, Boiler and Machinery, and if applicable, Flood and Earthquake Insurance.

Values: 100% Replacement cost value of property/Limit of \$5,000 deductible

Endorsements Required: Inflation Guard, Building Ordinance and Law and Agreed Amount and Replacement Cost endorsements; List of locations and schedule of values, if blanket policy; 438BFU (Loss Payee Endorsement with enlargement of same for easier reading), in favor of GE Capital Public Finance, Inc. amended to 30 days notice of change, cancellation or non-renewal; 30 days notice of cancellation; waiver of subrogation endorsement is required unless property is owner occupied; co-insurance should not be a condition of any insurance provided.

Loss of Rents/Business Interruption for 12 months (or in an amount equivalent to at least 12 mos. rent) is required.

Boiler and Machinery coverage is required. If the insurance carrier for the Boiler & Machinery coverage is different from that of the Property Coverage, a Joint Loss Agreement endorsement must be reflected on the evidences of insurance for both Property coverage and Boiler & Machinery coverage.

If the 438BFU Lender's Loss Payable Endorsement is not available, please submit another Loss Payable endorsement for review by GE Capital Public Finance, Inc.

LIABILITY:

Evidenced on Form Acord 25 – Certificate of Liability Insurance

Coverage to be on occurrence basis only.

SPECIAL INSTRUCTIONS

GE Capital Public Finance, Inc. is to be provided with an Evidence of Property Insurance and a Certificate of Liability Insurance from an insurance company having a Best's Rating of A/X or better for both hazard and liability coverage and must be executed by the insurance company or its authorized agent. The evidence and certificate must itemize all the above endorsements and the evidence must include a copy of the completed and signed 438BFU endorsement (a copy of which is attached). **WITHIN 90 DAYS OF ISSUANCE OF THE EVIDENCE OF INSURANCE, THE INSURANCE COMPANY IS TO PROVIDE A CERTIFIED COPY OF THE INSURANCE POLICY INCLUDING ALL ENDORSEMENTS AND AMENDMENTS.**

SCHEDULE I

ENVIRONMENTAL PHASE I REPORT REQUIREMENTS

The report is to be addressed to **GE Capital Public Finance, Inc.** ("GECPPF"), the New York City Industrial Development Agency and the **Lessee**, and must be signed by the preparing engineer. The introductory paragraphs of the report should include (a) the name of the property or transaction; (b) a brief description of the property; (c) the date of initial contact with GECPPF; (d) a statement acknowledging GECPPF as Lender; (e) a description of the assignment (Phase I or Phase II Reporting format); (f) Why the assessment is being conducted; and (g) how the information will be used. The following sections must be addressed and included in all reports:

1. **Property Description** – The property description should include site specific physical and demographic conditions and include a site diagram and area location map. In addition, a description of the hydrogeology as well as a statement as to the inferred direction of groundwater flow must be included. The type of soil, density, absorptive qualities, etc., distance to water table, and any other pertinent information useful in analyzing the movement of materials in and through the soil at the subject property must be addressed. Also to be included is the presence and quality of potable water and how said source may be impacted by on-site contamination.
2. **Historical Study** – A review of the historical uses of the property is to be included in the report. Review of real estate records such as title documentation (see below), appraisal reports, certificates of occupancy, building permits, etc., available deeds and other ownership records, tax maps/records, aerial photographs, topographical or township planning maps, Sanborn maps, and interviews may be utilized.

With regard to title documentation, the report must include a chain of title search (through a title company) listing past owners of the property. The search should go back a minimum of 50 years.

An affirmative statement must be given, as to whether or not there are any expected environmental concerns as a result of any prior ownership or use. If the property was previously used for agricultural purposes, the engineer must include statements as to what types of pesticides would have been used as well as their probable and existing impact to the subject property.

3. **On-Site Inspection** - The inspector is to make a physical inspection of the site to evaluate for visual signs of hazardous materials. The report should include the results of this inspection and must incorporate the following areas of concern:

(a) **Asbestos:**

- (i) **Suspect/potential asbestos containing materials (PACM)** which are readily accessible, such as ceiling tiles, mastic in flooring, boiler pipe wrapping, etc., are to be tested to determine the presence of asbestos. Other potential sources of asbestos containing materials which are not readily accessible,

such as wallboards, roof flashings, etc., need not be tested, but should be identified, and the quantity (i.e., sq. ft.) of suspected PACMs estimated. In both cases, the cost to remove it should be included in the report.

- (ii) The report must state whether the asbestos is in a friable or non-friable state and include an estimate of the cost to remove the asbestos containing materials.
- (iii) Asbestos containing materials, if they are not to be removed, are to be addressed in an Operations and Maintenance Agreement/Plan, a copy of which is to be included with the report.

(b) PCB's:

The report should identify any PCB containing transformers. If a "no PCB content" sticker is not present on the transformer, the inspector is to verify ownership and responsibility for its maintenance. GE Capital Public Finance, Inc. may require the Borrower have the transformer tested (by the responsible party) for PCB presence or leakage. Any PCB containing transformers or fixtures, for which a utility is not responsible, will have to be removed. Estimated costs for doing that removal are to be included in the report.

(c) Above and Underground Storage Tanks:

The inspection must include identification of any aboveground and underground storage tanks at the subject property. Any such tanks must be checked for the following: (i) condition, with the latest testing data included if it exists; (ii) whether or not registration with a Federal, State, or local agency is required; (iii) recommendations should be included for any testing or remediation indicated by the inspection and the latest testing data included with the report, and (iv) in the case of aboveground storage tanks, the report should indicate whether or not the ASTs need to be placed within secondary containment, i.e. bermed concrete containment.

(d) Radon:

Either a test should be made for radon gas or a radon survey map of the area should be consulted to determine the radon rating of the subject property. If radon is not an issue in the area of the subject property, an affirmative statement to that effect must be made.

(e) Wetlands:

Wetland issues must be addressed. If wetlands are not an issue, an affirmative statement to that effect should be included in the report.

(f) Hazardous Materials:

General housekeeping practices are to be outlined if hazardous materials are stored on site. This section should include an outline of materials utilized/stored on site, their purpose, methods of disposal, potential for discharge into municipal storm drains or on-site drainage facilities (including septic systems), and regulatory reporting requirements.

If a septic system is located on site, the report must address the following: (i) the age of the system, (ii) its location parameters, maintenance records and condition, (iii) its potential as a source of hazardous materials, and (iv) the need for testing of organic or inorganic substances must be addressed.

4. Activity Review - The inspector is to contact all federal (CERCLIS), state (EPA), and local regulatory agencies to determine whether the site or the surrounding properties within a one mile radius (regardless of the ASTM guidelines) are currently or have been involved in any cleanup activities. Any reference to such cleanup activity is to include the following: (a) location and distance of the site from the subject property including notation as to whether the site is up or down gradient to the subject property; (b) based on that information, an affirmative statement must be given as to whether or not each such site represents a potential environmental hazard to the subject property; (c) database records to be searched should include NPL, CERCLIS, RCRIS-Violators, HMIRS, PADS, ERNS, FINDS, TRIS, TSCA, UST/ AST, LUST, and any other applicable state or federal databases; and (d) the Activity Review must be less than 6 month old.
5. The report must be less than 6 months old.
6. The report must be updated if it was completed prior to any construction or substantial remodel. The update should include the use of construction materials as well as an update of all RCRA, CERCLIS & EPA lists.
7. Any other noted site specific environmental issues must be identified and recommendations for their removal/remediation should be offered.

SCHEDULE J**FORM OF CERTIFICATE OF AUTHORIZED REPRESENTATIVE**

We, the undersigned, hereby certify that we are duly qualified Authorized Representatives of Palm III, LLC ("Lessee") and Aabco Sheet Metal Co., Inc. ("Sublessee") and, with respect to Section 6.6(b) of the Lease Agreement dated as of June 1, 2004 (the "Agreement") by and between Lessee and the New York City Industrial Development Agency ("Agency"), that:

1. The attached financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis.

2. We have no knowledge of any Default or Event of Default under the Agreement.

3. We hereby certify that, as of the close of the preceding Fiscal Year of Lessee, at all times during such Fiscal Year, Lessee was in compliance with all provisions that relate to Lessee in the Agreement and in any other Security Document to which it shall be a party.

4. Section 6.18 of the Agreement requires Sublessee to maintain its ratio of Debt to Tangible Net Worth at not more than ____ to 1.00. The calculation of such ratio is set forth below:

5. Section 6.18 of the Agreement requires Sublessee to maintain its Debt Service Coverage Ratio at not less than ____ to 1.00. The calculation of such ratio is set forth below:

6. Section 6.18 of the Agreement requires Sublessee to maintain its Tangible Net Worth at not less than \$_____. Sublessee's Tangible Net Worth is \$_____.

Dated: _____, 20__.

Lessee:

PALM III, LLC

By: _____

Name: Ronald Palmerick

Title: Member

Sublessee:

AABCO SHEET METAL CO, INC.

By: _____

Name: Ronald Palmerick

Title: President