

Installment Sale
Agreement &
Assignment of
Lease

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

and

BTM DEVELOPMENT PARTNERS, LLC

**INSTALLMENT SALE AGREEMENT
AND ASSIGNMENT OF LEASE**

Dated as of September 14, 2006

New York City Industrial Development Agency
(2006 BTM Development Partners, LLC Project)

Affecting the Land generally known as an approximately 16.613-acre site
consisting of Block 2356, Lot 20, Block 2357, Lots 1 and 86, and
Block 2539, part of Lot 32
in Bronx County,
the City and State of New York
as more particularly described in Exhibit A
to this Installment Sale Agreement and Assignment of Lease
on the Official Tax Map of Bronx County

Record and Return to:
Hawkins Delafield & Wood LLP
One Chase Manhattan Plaza
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

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**INSTALLMENT SALE AGREEMENT
AND ASSIGNMENT OF LEASE**

This **INSTALLMENT SALE AGREEMENT AND ASSIGNMENT OF LEASE**, made and entered into as of the date set forth on the cover page hereof (this "Agreement"), 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 **BTM DEVELOPMENT PARTNERS, LLC**, a limited liability company organized and existing under the laws of the State of New York (the "Company"), having its principal office at c/o The Related Companies, L.P., 60 Columbus Circle, New York, New York 10023, 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, 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 (the "City") and the inhabitants thereof; and

WHEREAS, pursuant to a certain Memorandum of Understanding, dated as of April 2, 2004 (the "MOU"), by and among The City of New York (the "City"), New York City Economic Development Corporation, a New York local development corporation ("EDC"), the Company and BTM Merger Partners, Inc., a New York corporation, the parties to the MOU entered into certain agreements for the redevelopment of that certain parcel of real property comprising approximately 16.613 acres and generally described as Block 2356, Lot 20, Block 2357, Lots 1 and 86, and Block 2539, part of Lot 32, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), among which agreements was a certain Agreement of Lease, dated as of September 14, 2006, between the City, as landlord, and EDC, as tenant, as assigned by EDC to the Company (as the same has been and may hereafter be amended, supplemented or assigned, the "Ground Lease"); and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company and The Related Companies, L.P., a New York limited partnership and the control party of the Company (the "**Parent**"), for the construction of six buildings on the Land to include approximately 957,500 gross square feet of large-format retail establishments, restaurants and small shop space (and certain ancillary office space), and approximately 2,610 parking spaces in a multi-level parking garage and grade parking (collectively, the "**Project**", and the Land together with the improvements to be constructed thereon is referred to as the "**Facilities**"); and

WHEREAS, the Project will have a cost of approximately \$494,000,000 and the Company has requested financial assistance from the Agency in the form of mortgage recording tax exemption with respect to \$400,000,000 of borrowed Project funds; and

WHEREAS, the Company has represented to the Agency that the Project will create more than 2,000 direct and indirect construction jobs in the City over a 3-year period and more than 2,400 direct and indirect permanent jobs upon completion and lease-up, and will generate millions of dollars in recurring tax revenues for the City; and that Agency financial assistance in the form of mortgage recording tax exemption for \$400,000,000 of borrowed Project funds is critical to the financial viability of the Project; and

WHEREAS, to facilitate the Project, the Agency, the Company and the Parent have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to which (i) the Company will sublease the Facilities to the Agency pursuant to a certain Lease Agreement, dated as of even date herewith, between the Company, as landlord, and the Agency, as tenant (as the same may be amended or supplemented, the "**IDA Lease**"), (ii) the Agency will sell and assign its leasehold interest in the Facilities under the IDA Lease to the Company pursuant to this Agreement, and (iii) the Parent and the Company will enter into a Guaranty Agreement dated as of even date herewith with the Agency pursuant to which the Parent and the Company will guarantee to the Agency the payments, obligations, covenants and agreements of the Company under this Agreement; and

WHEREAS, in furtherance of such purposes the Agency adopted a resolution on August 8, 2006 (the "**Authorizing Resolution**"), authorizing the undertaking of the Project, the construction of the Facilities by the Company, the sublease of the Facilities by the Company to the Agency, and the sale and assignment of the Agency's leasehold interest under the IDA Lease in the Facilities pursuant to this Agreement; and

WHEREAS, the provision by the Agency of financial assistance to the Company in the form of mortgage recording tax exemption through a straight-lease transaction has been determined to be necessary to induce the Company to proceed with the Project within the City; and if the Agency does not provide such financial assistance, the Company could not feasibly proceed with the Project; and

WHEREAS, the cost of the Project is being financed in part (x) pursuant to a certain Building Loan Agreement, dated as of the date hereof, between the Company and Hypo Real Estate Capital Corporation, as agent for certain institutional lenders (the "**Mortgagee**"), in connection with which a loan in the principal amount of \$339,178,303 (the "**Building Loan**")

will be made to the Company and evidenced by one or more certain promissory notes of the Company of corresponding aggregate principal amount (the "**Building Loan Notes**"), and (z) pursuant to a certain Project Loan and Security Agreement, dated as of the date hereof, between the Company and the Mortgagee, in connection with which a loan in the principal amount of \$102,715,697 (the "**Project Loan**") will be made to the Company and evidenced by one or more certain promissory notes of the Company of corresponding aggregate principal amount (the "**Project Loan Notes**"); and

WHEREAS, in order to secure the obligations of the Company to the Mortgagee under the Building Loan Notes, the Company will grant a mortgage on its leasehold interest in the Facilities under the Ground Lease, and the Agency will grant a mortgage on its leasehold interest in the Facilities under the IDA Lease, to the Mortgagee, subject to Permitted Encumbrances, pursuant to a certain Building Loan Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof, from the Company and the Agency to the Mortgagee; and

WHEREAS, in order to secure \$60,821,697 principal amount of the obligations of the Company to the Mortgagee under the Project Loan Notes, the Company will grant a mortgage on its leasehold interest in the Facilities under the Ground Lease, and the Agency will grant a mortgage on its leasehold interest in the Facilities under the IDA Lease, to the Mortgagee, subject to Permitted Encumbrances, pursuant to a certain Project Loan Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof, from the Company and the Agency to the Mortgagee;

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 or create a debt of the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the installment purchase payments, revenues and receipts derived from or in connection with the Facilities, including moneys received under this Agreement):

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1. Definitions. The following terms shall have the following meanings in this Agreement:

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

Additional Installment Purchase Payments shall mean any additional installment purchase payments described in Section 3.3(b) of this Agreement.

An Affiliate of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person.

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.

Agreement shall mean this Installment Sale Agreement and Assignment of Lease, dated as of the date set forth on the cover page hereof, between the Agency and the Company, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facilities shall mean the commercial facilities located or to be located on the Land for development, tenancy and use by large-format retail establishments, restaurants and small shop space (and office space and other uses ancillary to any of the foregoing) and a supporting multi-level parking garage and grade parking, to consist of approximately 957,500 gross square feet of retail space and approximately 2,610 parking spaces, subject, however, to any alterations or additions (x) to the Project effected in accordance with Section 2.2(f) hereof, and (y) to the Facilities effected in accordance with Section 4.1 hereof after the completion of the Project.

Approved Transferee shall mean any Person:

(i) (a) that is not a Prohibited Person, (b) that is not under the Control of a Prohibited Person, (c) that does not Control a Prohibited Person, and (d) whose Principals or members or Principals of a member are not Prohibited Persons;

(ii) whose Background Investigative Check (or any successor or replacement service) and the Background Investigative Check (or any successor or replacement service) of such Person's members, its Principals or the Principals of the

members by the Agency, shall, in any case, not uncover any material negative results (as being interpreted under then-existing City policy without discrimination); or, if such material negative results shall have been uncovered, such material negative results shall have been cured prior to the proposed action involving such Approved Transferee such that, a later Background Investigative Check after such cure would not reveal such material negative results;

(iii) if intending to become a user or occupier of any portion of the Facilities pursuant to Section 6.1 or 9.2(a) hereof, such Person shall have delivered to the Agency a certificate executed by an authorized representative of such Person stating either of the following: (A) that such Person's occupancy at the Facilities will not result in (1) the removal of a plant or facility of such Person located outside of the City but within the State to the Facilities or (2) in the abandonment of one or more of such plants or facilities of such Person located outside of the City but within the State; or (B) (1) that such Person's location at the Facilities is reasonably necessary to discourage such Person from removing its business to a location outside of the State or (2) that such Person's location at the Facilities is reasonably necessary to preserve such Person's competitive position in its industry. To the extent requested by the Agency, the foregoing certifications will be supported by evidence provided by the Approved Transferee in form reasonably acceptable to the Agency; and

(iv) that is an Affiliate of the Parent.

Approved Use shall mean the use of the Facilities by large-format retail establishments, restaurants and small shop space (and office space and other uses ancillary to any of the foregoing) and a supporting multi-level parking garage and grade parking.

Assignment of Leases and Rents shall mean those two (2) certain Assignments of Leases and Rents, each dated as of the date hereof, and each from the Company to Hypo Real Estate Capital Corporation, as agent for certain institutional lenders, and shall include any and all amendments thereof and supplements thereto to the extent such amendments or supplements would constitute a Permitted Mortgage.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Company, the Managing Member, any member, or any other employee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Company has given written notice to the Agency and (iii) in the case of the Parent, the general partner of the Parent or any officer or employee of such general partner who is authorized to perform specific duties hereunder or under the Guaranty Agreement and of whom another Authorized Representative of the Parent has given written notice to the Agency; and provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project 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.

Background Investigative Check shall mean the due diligence performed with the background investigative report then in current use by The City of New York.

Base Installment Purchase Payment shall mean the base installment purchase payment described in Section 3.3(a) of this Agreement.

Building Loan shall mean the loan made on the Closing Date by the Mortgagee to the Company pursuant to the Building Loan Agreement in the amount of \$339,178,303 and evidenced by the Building Loan Notes in connection with the Project.

Building Loan Agreement shall mean the Building Loan Agreement, dated as of the date hereof, between the Company and the Mortgagee, and shall include any and all amendments thereof and supplements thereto hereafter made in accordance therewith.

Building Loan Mortgage shall mean that certain Building Loan Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof, from the Company and the Agency, as mortgagors, to Hypo Real Estate Capital Corporation, as agent for certain institutional lenders, as mortgagee, and shall include any and all amendments thereof and supplements thereto to the extent such amendments or supplements would constitute a Permitted Mortgage.

Building Loan Notes shall mean those certain promissory notes of the Company in the amount of \$339,178,303 evidencing the Building Loan and secured by the Building Loan Mortgage.

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

Closing Date shall mean the date of this Agreement.

Company shall mean BTM Development Partners, LLC, a limited liability company organized and existing under the laws of the State, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof.

Con Ed shall mean Consolidated Edison Company of New York, Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns.

Con Ed Easement shall mean that certain Easement Grant made or to be made by the City and the Company in favor of Con Ed pursuant to which Con Ed shall have the right to erect, repair and maintain certain utility lines and facilities along, under and through the Facilities as more particularly described therein.

Control (including the related terms “controlled by” and “under common control with”) shall mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting

securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

EDC shall mean the New York City Economic Development Corporation, a local development corporation organized and existing under the laws of the State of New York, and its successors and assigns.

Employee Owners shall mean those individuals (i) who are or were employed by the Parent, and (ii) who own, directly or indirectly, beneficial interests in the Company.

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

Existing Tenant Leases shall mean those Tenant Leases executed by the Company with respect to the Facilities prior to the Closing Date or otherwise as are described in Exhibit C attached hereto.

Existing Tenants shall mean those Tenants as shall be parties to the Existing Tenant Leases.

Expiration Date shall mean September 14, 2036.

Facilities shall mean, collectively, the Land and the Improvements.

Fiscal Year of the Company shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

Ground Lease shall mean that certain Agreement of Lease, dated as of September 14, 2006, between the City, as landlord, and EDC, as tenant, as assigned by EDC to the Company, as the same may hereafter be amended or supplemented in accordance with its terms.

Guarantors shall mean, collectively, the Company and the Parent, and their respective permitted successors and assigns under the Project Documents.

Guaranty Agreement shall mean the Guaranty Agreement, dated as of even date herewith, from the Guarantors to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Highly distressed area shall have the meaning assigned to such term in Section 854(18) of the General Municipal Law of the State, as in effect on the Closing Date.

IDA Lease shall mean the Lease Agreement, dated as of even date herewith, between the Company, as landlord, and the Agency, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Impositions shall mean all taxes (including all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction privilege, privilege, license or similar taxes), assessments (including to the extent not discharged prior to the Closing Date, all assessments for public improvements or benefits, ground rents (including all rental payments due under the Ground Lease) under any ground leases, business improvement district assessments, water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Facilities or any rents (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) the Company (including all income, franchise, single business or other taxes imposed on the Company for the privilege of doing business in the City), (b) the Facilities, or any part thereof or any rents therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Facilities or the leasing or use of the Facilities or any part thereof, other than commercial occupancy taxes imposed on tenants.

Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Closing Date or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.2 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto (other than those improvements in space occupied by a Tenant which, pursuant to the related Tenant Lease, is owned by such Tenant).

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

Initial Mortgages shall mean, collectively, the Building Loan Mortgage, the Project Loan Mortgage and the Assignment of Leases and Rents.

Installment Purchase Payments shall mean, collectively, the Base Installment Purchase Payment and the Additional Installment Purchase Payments.

Land shall mean those certain lots, pieces or parcels of land known as Block 2356, Lot 20, Block 2357, Lots 1 and 86, and Block 2539, part of Lot 32, and as more particularly described in Exhibit A - "Description of the Land" 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 become applicable at any time hereafter to (i) the Company, (ii) the Parent, (iii) the Facilities or any part thereof, or (iv) any use or condition of the Facilities or any part thereof.

Liens shall have meaning specified in Section 6.5(a) hereof.

Loans shall mean, collectively, the Building Loan and the Project Loan.

Loss Event shall have the meaning specified in Section 5.1(a) hereof.

Major Tenant shall mean a Tenant subject to a Major Tenant Lease.

Major Tenant Lease shall mean any and all Tenant Leases that are for at least 50,000 square feet within the Facilities. For purposes of determining whether a Tenant Lease is a Major Tenant Lease, any expansion rights of the Tenant shall be taken into account as if exercised in determining the rentable area leased by such Tenant.

Managing Member shall mean Related BTM Development Partners, LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and assigns as managing member of the Company.

Mortgagee shall mean Hypo Real Estate Capital Corporation, as agent for certain institutional lenders and as mortgagee under the Initial Mortgages, together with any successor mortgagee under any Permitted Mortgages.

Mortgage Notes shall mean, collectively, the Building Loan Notes and the Project Loan Notes and shall include any and all amendments thereof and supplements thereto hereafter made in conformity with the respective Loans.

Mortgages shall mean, collectively, the Initial Mortgages and any Permitted Mortgages, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith to the extent such amendments or supplements would constitute a Permitted Mortgage.

MOU shall have the meaning assigned to such term in the recitals to this Agreement.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency or the Mortgagee) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel for the Company or the Parent who shall be reasonably acceptable to the Agency.

Parent shall mean The Related Companies, L.P., a limited partnership organized and existing under the laws of the State, and its permitted successors and assigns under the Guaranty Agreement.

Permitted Encumbrances shall mean:

- (i) the Ground Lease, the Con Ed Easement, this Agreement, the IDA Lease and the Mortgages;
- (ii) Liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any Lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of property comprising part of the Facilities or any contractor hired to perform Project work may place on or with respect to the Facilities or any part thereof;
- (v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially and adversely interfere with or impair the Company's use and enjoyment of the Facilities as herein provided;
- (vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facilities as do not, as set forth in a certificate of an Authorized Representative of the Company delivered to the Agency, either singly or in the aggregate, render title to the Facilities unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency;
- (vii) those exceptions to title to the Facilities enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof insuring the leasehold interest of the Agency in the Facilities, a copy of which is on file at the offices of the Agency;
- (viii) any Lien, restrictive declaration or performance mortgage with respect to the operation of the Facilities or any portion thereof arising under applicable law or regulation by reason of a grant or other funding received by the Company from the City, the State or any governmental agency or instrumentality;
- (ix) any Tenant Lease meeting the requirements of this Agreement including any memorandum of lease with respect to such Tenant Lease;
- (x) any subordination and non-disturbance agreement executed in favor of a Tenant; and

(xi) any Lien, security interest, encumbrance or charge to which the Agency shall consent, in its sole discretion.

Permitted Mortgages shall mean any mortgage, assignment of leases and rents and/or security agreement with respect to the Company's leasehold interest in all or a portion of the Facilities (including any amendment, supplement, assignment, consolidation or refinancing of any of the Initial Mortgages or any Permitted Mortgages) which

(a) does not subject the Agency to any obligations or liability (whether pecuniary or otherwise) except to the extent of the Agency's leasehold interest under the IDA Lease in the Facilities,

(b) does not subject the State or the City to any obligations or liability (whether pecuniary or otherwise),

(c) does not impose any mortgage, lien, pledge, assignment or security interest in or with respect to the Installment Sale Agreement or the Guaranty Agreement; and

(d) does not claim or assert the status or involvement of the Agency as a basis for any mortgage recording tax exemption other than in connection with the initial recordation of the Initial Mortgages.

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

Principal shall mean, when used with respect to any Person (including the Company), the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one or more intermediaries Controls such Person.

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 have the meaning ascribed thereto in the recitals hereto.

Project Counsel shall mean Hawkins Delafield & Wood LLP or such other attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

Project Documents shall mean, collectively, the Ground Lease, the MOU, the Building Loan Agreement, the Project Loan Agreement, the IDA Lease, this Agreement, the Guaranty Agreement, the Mortgage Notes and the Mortgages.

Project Loan shall mean the loan made on the Closing Date by the Mortgagee to the Company pursuant to the Project Loan Agreement in the amount of \$102,715,697 and evidenced by the Project Loan Notes in connection with the Project.

Project Loan Agreement shall mean the Project Loan and Security Agreement, dated as of the date hereof, between the Company and the Mortgagee, and shall include any and all amendments thereof and supplements thereto hereafter made in accordance therewith.

Project Loan Mortgage shall mean that certain Project Loan Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof, from the Company and the Agency, as mortgagors, to Hypo Real Estate Capital Corporation, as agent for certain institutional lenders, as mortgagee, and shall include any and all amendments thereof and supplements thereto to the extent such amendments or supplements would constitute a Permitted Mortgage.

Project Loan Notes shall mean those certain promissory notes of the Company in the amount of \$102,715,697 evidencing the Project Loan and secured as to \$60,821,697 of principal amount by the Project Loan Mortgage.

State shall mean the State of New York.

Tenant shall mean any Person who shall lease, use or occupy any portion of the Facilities pursuant to a Tenant Lease.

Tenant Lease shall mean any lease or sublease, including any Major Tenant Lease, by the Company (or by any other Person whose leasehold estate in the Facilities or any portion thereof is derivative of the Company) of property constituting all or any part of the Facilities, any tenancy with respect to the Facilities or any part thereof, whether or not in writing, any license or concession agreement and any other agreement, by whatever name called, involving a transfer or creation of possessory rights or similar rights of use or occupancy, in the Facilities or any part thereof without transfer of title, and any and all guarantees of any of the foregoing, whether now existing or hereafter made; provided, however, any assignment by a Tenant of a Tenant Lease by the existing Tenant to a new Person shall be deemed a new Tenant Lease.

Termination Date shall mean such date on which this Agreement may terminate pursuant to its terms and conditions prior to the Expiration Date.

Underlying Indebtedness shall mean that certain principal indebtedness of the Company incurred on the Closing Date and secured by the Building Loan Mortgage and the Project Loan Mortgage in the aggregate principal amount of \$400,000,000, as such principal indebtedness may be reduced from time to time by payments or prepayments, or refinanced to the extent of its then outstanding principal balance and secured by Permitted Mortgages.

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 Closing Date.

(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 and limited liability partnerships), trusts, corporations, limited liability companies 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 represents and warrants that the Agency (i) 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, (ii) assuming the accuracy of the representations made by the Company, is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and (iii) by proper action of its board of directors, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party, and this Agreement and each other Project Document to which the Agency is a party are the legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with their respective terms.

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Company or by or on behalf of the Parent to the Agency, hereby affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that:

(i) the providing of financial assistance (within the meaning of the Act) in the form of mortgage recording tax exemption through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Company to proceed with the Project;

(ii) the transactions contemplated by this Agreement shall not result in the removal of any facilities or plant of the Company or any occupant or user of the Facilities from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Company or of any occupant or user of the Facilities located within the State (but outside of the City); and

(iii) in accordance with the Act, the Facilities are located in a "Highly distressed area" and the Agency has determined after public hearing as required by the Act that undertaking the Project will serve the public purposes of the Act by increasing the overall number of permanent, private sector jobs in the State, and the Mayor of the City, in accordance with the Act, has confirmed the proposed action of the Agency.

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

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State, is not in violation of any provision of its articles of organization or its operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Company is or shall be a party and the consummation of the transactions herein and therein contemplated will not violate any provision of law, any order of any court or agency of government, or the articles of organization or operating agreement of the Company, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound (including, without limitation, the Ground Lease), 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) The Project Documents to which the Company is or shall be a party, and any and all other agreements and documents required to be executed and delivered by the Company in order to carry out, give effect to and consummate the transactions contemplated by this Agreement, have been duly authorized, executed and delivered by the Company and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

(d) There is no action or proceeding pending or, to the Company's knowledge, after diligent inquiry, threatened by or against the Company by or before any court or administrative agency, nor to the knowledge of the Company is there any basis therefor, looking toward the dissolution or liquidation of the Company or wherein an unfavorable decision, ruling or finding would have a material adverse effect on the ability of the Company to perform its obligations under this Agreement and each other Project Document to which it is or shall be a party.

(e) The Facilities will constitute a “project” under the Act, and the Company intends to operate the Facilities, or cause the Facilities to be operated, in accordance with this Agreement and as Approved Facilities and a qualified “project” in accordance with and as defined under the Act.

(f) The Facilities are located in a “Highly distressed area” within the meaning of the Act.

(g) The financial assistance (within the meaning of the Act) provided by the Agency to the Company in the form of mortgage recording tax exemption through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is necessary to induce the Company to proceed with the Project.

(h) The transactions contemplated by this Agreement shall not result in the removal of any facilities or plant of the Company or any occupant or user of the Facilities from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Company or any occupant or user of the Facilities located within the State (but outside of the City).

(i) Undertaking the Project is anticipated to serve the public purposes of the Act by increasing the overall number of permanent, private sector jobs in the State.

(j) No portion of the Project is for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor does the Project contemplate the providing of assistance to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(k) The Company is not a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Company’s opinion, materially adversely affects, or in the future would, so far as the Company can now foresee, materially adversely affect the ability (financial or otherwise) of the Company to perform its obligations hereunder.

(l) The Company is in compliance, and will continue to comply, with all applicable Legal Requirements.

(m) The Mortgage Notes evidence the obligation of the Company to repay the Loans made by the Mortgagee to the Company pursuant to the Initial Mortgages for purposes of financing a portion of the cost of the Project.

(n) The total estimated cost of the Project is \$494,000,000, of which at least \$400,000,000 will be provided from Loans and the balance of which shall be provided from equity by or on behalf of the Company.

(o) The amounts provided to the Company pursuant to the Loans, together with other moneys available to the Company, are reasonably expected to be sufficient to pay all costs in connection with the completion of the Project.

(p) The Project will be designed, and the construction and operation of the Facilities will be, in compliance with all applicable Legal Requirements.

(q) The Company, the members of the Company, the Principals of the members of the Company and the Principals of the Company are not Prohibited Persons.

(r) The aggregate square footage of the Land is approximately 16.613 acres.

(s) The fiscal year of the Company is the 365 or 366 day period, as the case may be, commencing on January 1, and ending on December 31 of each calendar year.

(t) The Company intends to construct six buildings on the Land to include approximately 957,000 gross square feet of large-format retail establishments, restaurants and small shop space (and office space and other uses ancillary to any of the foregoing), and approximately 2,610 parking spaces in a multi-level parking garage and grade parking, subject, however, to the provisions of Sections 2.2(f) and 4.1(b) hereof.

(u) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Company (x) in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party, or (y) in connection with the subleasing of the Facilities by the Company to the Agency pursuant to the IDA Lease, have been obtained.

(v) There is no existing violation against the Facilities filed by any court or administrative agency that may prohibit the ability of the Company to construct the Project or operate the Facilities for their intended purposes or for which the Company has not otherwise agreed or made arrangements to have removed and satisfied of record.

(w) The operation of the Facilities in the manner presently contemplated and as described in this Agreement will not conflict with any zoning, environmental, water or air pollution law, ordinance or regulation or any similar law, ordinance or regulation applicable thereto as they exist as of the Closing Date.

(x) Pursuant to the IDA Lease, the Company has vested the Agency with a valid leasehold estate in the Facilities in existence on the Closing Date.

(y) The Ground Lease is in full force and effect, and the Company has no knowledge of any breach or default on its part thereunder, if any, which, if uncured, might cause an "event of default" under the Ground Lease.

(z) The Facilities consist of a portion of the property demised to the Company under the Ground Lease.

(aa) The execution, delivery and performance of this Agreement and of the IDA Lease by the Company do not constitute a breach, default or violation of the terms of the Ground Lease or the Initial Mortgages, nor do they require any consent of the City or the Mortgagee which consents have not been obtained prior to the Closing Date.

(bb) The initial term of the Ground Lease will expire on September 13, 2055, subject to the Company's extension rights thereunder.

(cc) The amount of financial assistance to be provided by the Agency to the Company on the Closing Date in the form of mortgage recording tax exemption is \$11,200,000, based upon the aggregate amount of mortgage-secured indebtedness to be incurred by the Company for the Project under the Initial Mortgages equaling \$400,000,000.

(dd) The Company expects that the Project will be complete and available for Tenants to occupy on or about September 30, 2010.

(ee) All of the Initial Mortgages constitute Permitted Mortgages.

(ff) The financing being provided to the Company for the Project under the Building Loan Agreement and the Project Loan Agreement constitutes "construction loan financing", and not "land loan or bridge financing", as such terms are used in section 2(b)(ii) of the MOU.

(gg) The Company is Controlled by the Parent.

(hh) None of the Tenants are or shall be the City or any department or agency thereof, other than as permitted pursuant to Section 9.2(b)(iii) hereof.

(ii) The operation of the Facilities by the Company in the manner presently contemplated and as described in this Agreement will not conflict with any order, consent decree or other remediation plan issued or approved by a court, administrative or regulatory body under any federal, state or local environmental laws, rules or regulations.

(jj) Attached to this Agreement as Exhibit C is a true, correct and complete statement of all Existing Tenant Leases.

(kk) None of the Existing Tenants, nor any Person that Controls any such Existing Tenants, is a Prohibited Person.

(ll) None of the Existing Leases will result in the removal of a plant or facility of a Person located outside of the City (but within the State) to the Facilities, nor in the abandonment of one or more plants or facilities of a Person located outside of the City (but within the State).

ARTICLE II

THE PROJECT

Section 2.1. The IDA Lease. Pursuant to the IDA Lease, the Company has subleased the Facilities in existence on the Closing Date to the Agency, free and clear of all Liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

Section 2.2. The Project. (a) The Company agrees to proceed with the Project to completion and, in connection therewith, (i) to construct and install the Improvements on the Land, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the purposes of proceeding with the Project, (iii) to pay all fees, costs and expenses incurred in the construction of the Facilities from the Loans and equity of or made available to the Company, and (iv) in the Company's discretion, to ask, demand, sue for, levy, recover and receive all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Company under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Company unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by the fifteenth (15th) anniversary of the Closing Date (or such later date as shall be permitted therefor under the Ground Lease), such that the Facilities shall be available for occupancy by Tenants, in a first class workerlike manner, free of defects in materials and workmanship (including latent defects). In proceeding with the Project, the Company shall, in the Company's discretion, take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) the Loans, and (ii) equity furnished by or on behalf of the Company to the extent such funds shall be necessary to cover costs of the Project that exceed the Loans. In the event moneys derived from the Loans are not sufficient to pay the costs necessary to complete the Project in full, the Company shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from the Loans and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Company be entitled to any diminution of the Installment Purchase Payments to be made under this Agreement.

(b) The Company shall pay (i) all of the costs and expenses in connection with the vesting of the Agency of a leasehold estate in the Facilities pursuant to the IDA Lease and of any such instruments or documents relating thereto and the filing and recording of any such instruments or documents, if required, (ii) all taxes and charges, if any, payable in connection with the vesting with the Agency of a leasehold estate in the Facilities in existence on the Closing Date, and (iii) all other expenses, charges or claims incurred in connection with the Project.

(c) The Company unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facilities, all of which will be done in compliance with all applicable Legal Requirements, with the Ground Lease and with the conditions and requirements of all policies of insurance with respect to the Facilities and this Agreement. Upon completion of the Project but no later than the commencement of occupancy by a Tenant of any portion of the Facilities, the Company will obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facilities for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) Upon completion of the Project such that the same shall be available for occupancy by Tenants, the Company shall evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Company in substantially the form set forth in Schedule A attached hereto, together with all attachments required thereunder.

(e) Upon the first occupancy of the Facilities or any portion thereof by first a Tenant (whether or not a Major Tenant), and then by a Major Tenant, the Company shall promptly deliver written notice to the Agency of each such occupancy.

(f) Prior to the earliest of (A) the seventh (7th) anniversary of the Closing Date, (B) the completion of the Project and (C) the receipt of a temporary certificate of occupancy for all or any portion of the Facilities, the Company shall have the option of increasing or decreasing the 957,500 gross square footage of retail space and/or the 2,610 parking spaces (as each is referred to in the definition of "Approved Facilities") by up to ten percent (10%) without the necessity of obtaining Agency consent to such modification, provided, however, that (i) no such modification shall effect a change to the Approved Uses for the Facilities, and (ii) in the event any such modification shall cause the actual developed square footage of the Approved Facilities to be less than 900,000 square feet, the obligation of the Company under Section 8.3 hereof to pay the Benefit Amount in such event shall not be impaired, reduced or otherwise affected by the options of the Company set forth in this Section 2.2(f). Any modification of the Facilities prior to the earliest of (A) the seventh (7th) anniversary of the Closing Date, (B) the completion of the Project and (C) the receipt of a temporary certificate of occupancy for all or any portion of the Facilities that shall cause the gross square footage of retail space and/or the parking spaces to be increased or decreased by more than ten percent (10%) shall require the approval of an Authorized Representative of the Agency (which approval shall not be unreasonably withheld or delayed), and clauses (i) and (ii) of the immediately preceding sentence shall apply to such modification.

(g) Upon the seventh (7th) anniversary of the Closing Date, but no later than thirty (30) days thereafter, the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company certifying as to the actual developed square footage by the Company of the Approved Facilities.

Section 2.3. Leasehold Title Insurance. On or prior to the Closing Date, the Company will obtain and deliver to the Agency (a) a leasehold title insurance policy in an

amount not less than \$500,000 insuring the Agency's leasehold interest under the IDA Lease in the Facilities in existence on the Closing Date against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of the Land certified to the Company, the title company issuing such title insurance policy and the Agency. Any proceeds of such leasehold title insurance shall be paid to the Company and applied by the Company to remedy the applicable defect in title in respect of which such proceeds shall be derived.

Section 2.4. No Sales Tax Exemption. The Company acknowledges and agrees that it is not acting as agent for the Agency in connection with the construction of the Project and the purchase of materials therefor. The Company shall make no claim that any items purchased or leased for the Project are exempt from the imposition of any sales or use tax by reason of the involvement of the Agency in the Project.

ARTICLE III

SALE OF FACILITIES AND INSTALLMENT PURCHASE PAYMENT PROVISIONS

Section 3.1. Lease and Sale of the Facilities. Pursuant to the IDA Lease, the Company has subleased the Facilities in existence on the Closing Date to the Agency. The Agency hereby assigns, conveys, sells and transfers to the Company, the entirety of the Agency's leasehold interest in the Facilities under the IDA Lease and assigns the IDA Lease to the Company, all upon and subject to the terms and conditions herein set forth. Promptly following the first occupancy by any Tenant of any portion of the Facilities, and thereafter during the term of this Agreement, the Company shall use and operate the Facilities, or cause the Facilities to be occupied, used and operated, as Approved Facilities and a "project" in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Company shall not use or operate the Facilities or allow the Facilities or any part thereof to be occupied, used or operated for any lawful purpose or in violation of any certificate of occupancy affecting the Facilities in any manner or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

It is the intention of the Agency and the Company under this Agreement that the assignment, conveyance, sale and transfer hereunder to the Company by the Agency of the entirety of the Agency's leasehold interest in the Facilities (as same has been demised to the Agency under the IDA Lease) and the IDA Lease shall not result in a merger of that leasehold interest with the leasehold interest demised to the Company under the Ground Lease, and that (i) the IDA Lease shall be neither terminated nor impaired as a result of the foregoing assignment, conveyance, sale and transfer to the Company; and (ii) the IDA Lease shall continue in full force and effect, and the leasehold interest demised thereunder shall remain an estate vested in the Company, until the IDA Lease expires or sooner terminates in accordance with its terms.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Closing Date and shall expire at 11:58 p.m. (New York City time) on September 14, 2036, or upon such earlier date as this Agreement may be terminated by the Agency as hereinafter provided. The Agency hereby conveys to the Company and the Company hereby accepts sole and exclusive possession of the Facilities as and to the extent the Agency has received same under the IDA Lease.

Section 3.3. Installment Purchase Payment Provisions. (a) *Base Installment Purchase Payment.* The Company shall pay the Base Installment Purchase Payment to the Agency, without demand or notice, on the Closing Date in the amount of \$1.00, which shall constitute the entire amount of Base Installment Purchase Payment payable hereunder.

(b) *Additional Installment Purchase Payments.* Throughout the term of this Agreement, the Company shall pay to the Agency any additional amounts required to be paid by the Company to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Installment Purchase Payments.

(c) Missed Payments. In the event the Company should fail to make or cause to be made any of the Installment Purchase Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4. Installment Purchase Payments Payable Absolutely Net. The obligation of the Company to pay Installment Purchase Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Installment Purchase Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facilities, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Company and the Agency shall be indemnified by the Company for, and the Company shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.5. Nature of Company's Obligation Unconditional. The Company's obligations under this Agreement to pay Installment Purchase Payments shall be absolute, unconditional and general obligations, and 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 or any other Person and the obligation of the Company shall arise whether or not the Project has been completed as provided in this Agreement. The Company will not suspend or discontinue payment of any Installment Purchase Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Company hereunder for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Installment Purchase Payments hereunder.

ARTICLE IV

MAINTENANCE, TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements. (a) During the term of this Agreement, but subject to the demolition and construction work necessary to complete the Project, the Company will keep the Facilities in good and safe operating order and condition, ordinary wear and tear excepted, will use and operate the Facilities in the manner for which intended and contemplated by this Agreement, and will make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Company at the Facilities shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be similar in quality 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 Facilities, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facilities, or to furnish any utilities or services for the Facilities, and the Company hereby agrees to assume full responsibility therefor.

(b) The Company shall have the privilege of making such alterations of or additions to the Facilities or any part thereof, after the issuance of a temporary certificate of occupancy for all or any portion of the Facilities, from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that

(i) as a result of such alterations or additions, the usefulness, the structural integrity or operating efficiency of the Facilities is not materially 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 Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Facilities 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 effected in compliance with the terms of the Ground Lease;

(v) such additions or alterations do not change the use of the Facilities from an Approved Use and, if such additions or alterations would necessitate that the Company obtain a discretionary land use approval from the applicable governmental authority, then the Company shall not proceed with such additions or alterations without the approval of an Authorized Representative of the Agency (which approval shall not be unreasonably withheld or delayed); and

(vi) such additions or alterations do not change the nature of the Facilities so that they would not constitute a "project" within the meaning of the Act.

All alterations of and additions to the Facilities shall constitute a part of the Facilities, subject to the Ground Lease, this Agreement and the Mortgages. No alteration or addition to the Facilities, whether or not effected with the approval of the Agency, shall be deemed to modify, impair or waive the obligations of the Company under Section 8.3 hereof to make a payment of the Benefit Amount (as defined therein) upon the circumstances set forth therein.

(c) The Company shall not create, permit or suffer to exist any mortgage, encumbrance, Lien, security interest, claim or charge against the Facilities or any part thereof, or the interest of the Agency or the Company in the Facilities or the Ground Lease, the IDA Lease or this Agreement, except for Permitted Encumbrances.

(d) In the event New York State Finance Law Section 137 shall either be amended or judicially interpreted to become applicable to the Project or the Facilities, the Company agrees that 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 Facilities 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 an executed contract, the Company shall deliver to the Agency a copy of the proposed contract therefor along with a bond if any is required under this Agreement, in compliance with New York State Finance Law Section 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).

Section 4.2. Removal of Fixtures from the Facilities. (a) The Company shall have the privilege from time to time of removing from the Facilities any fixture (the “Existing Facilities Property”) and thereby removing such Existing Facilities Property from this Agreement, **provided, however,** no such removal shall be effected if such removal would change the nature of the Facilities as Approved Facilities and a “project” within the meaning of the Act

(b) The removal from the Facilities of any Existing Facilities Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Company to any abatement or reduction in the Installment Purchase Payments payable by the Company under this Agreement.

Section 4.3. No Exemption Based Upon Agency’s Leasehold Interest. It is recognized that under the provisions of the Act the Agency is required to pay no taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Company expressly covenants and agrees that it shall not seek an exemption from any real estate taxes in connection with the Facilities or any portion thereof, if such exemption is based upon this Agreement or the Agency’s leasehold interest in the Facilities.

Furthermore, other than in connection with the initial recordation of the Initial Mortgages, the Company covenants and agrees that it will not claim, or allow any mortgagee to claim, any mortgage recording tax exemption, based on the status or involvement of the Agency in the Project, in connection with the recordation of any Permitted Mortgage.

Section 4.4. Impositions. The Company shall pay when the same shall become due all Impositions levied and assessed upon or against the Facilities, the IDA Lease, this Agreement, any ownership estate or interest of the Agency or the Company in the Facilities, or the Installment Purchase Payments or other amounts payable hereunder during the term of this Agreement, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, including charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facilities. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facilities are exempt from Impositions solely due to the Agency's leasehold estate in the Facilities, the Company shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facilities if the Company were the owner of record of the Facilities and the Agency had no leasehold estate in the Facilities.

The Company may contest in good faith the payment of any Imposition if (i) such contest shall not result in the Facilities 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 Company or the Agency being in any danger of any civil or any criminal liability for failure to pay the Imposition, and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to pay the Imposition (provided, however, that in the event the Mortgagee shall require the furnishing of security by the Company in connection with a contest of any such Imposition, the Agency shall not require that any additional security be furnished).

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 Facilities, the Company shall maintain insurance 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 Company. In addition to this general requirement, such insurance shall, for purposes of subsection (b) through (g) of this Section 4.5, include, without limitation (hereinafter "**Specific Coverage**"):

(i) During (x) the period of the initial construction, an owner's controlled insurance program in a minimum amount of \$100,000,000 per occurrence, and (y) any other period of renovation, improvement or reconstruction of the Facilities or any portion thereof, to the extent not covered by the general liability insurance referred to below, owners & contractors protective liability insurance for the benefit of the Company and the Agency in a minimum amount of \$5,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) Commercial general liability insurance (including contractual liability coverage, together with any umbrella liability insurance) naming the Company as the primary insured, and the Agency as an additional insured, in accordance with customary insurance practices for similar operations with respect to the Facilities and the business thereby conducted in a minimum amount of \$5,000,000 for the Facilities (or such lesser amount agreed upon by the Agency upon written request by the Company) per occurrence per location aggregate, which insurance (A) may be effected under overall

blanket or excess coverage policies of the Company or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (B) shall not contain any provisions for a self-insured retention or deductible amount, except as may be otherwise approved in writing by the Agency in its sole discretion;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facilities; the Company 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) During any period of construction, renovation, improvement or reconstruction of any of the Facilities, the Company shall cause its general contractor to maintain liability insurance as a primary insured, and naming the Company and the Agency as additional insureds, in a minimum amount of \$5,000,000 (or such lesser amount agreed upon by the Agency upon written request by the Institution) on a "per project aggregate limit" (or any functional equivalent) for bodily and personal injury claims, which insurance shall also cover claims against the Company and/or the Agency for negligence by a contractor and for negligence of subcontractors hired by the contractor or subcontractors, and for any vicarious liability of the Company and/or the Agency arising from such contractor's or subcontractor's negligent activity; and

(v) Upon the written request of the Agency from time to time, such other insurance as may be reasonably necessary or prudent to provide the Agency with insurance protection that is at a minimum practically equivalent to the insurance provided by the Company in accordance with this Section 4.5 on the Closing Date, which may include revisions to the insurance requirements set forth herein as to coverage amounts, policy terms and conditions, limits of liability or insurable hazards, due to changes occurring in the forms of insurance policies and/or industry insurance practices during the term of this Agreement; provided however, that any revised insurance coverage requested by the Agency (i) shall not exceed the limits of liability or amounts of insurance coverage provided by the Company to the City pursuant to Article 7 of the Ground Lease, and (ii) shall be for commercially available insurance coverage that at the time is commonly carried for facilities similarly situated to the Facilities or for business operations of a size, nature and character of the business operations being conducted at the Facilities.

(b) All insurance required by Section 4.5(a) above shall be procured from and maintained with financially sound and generally recognized responsible insurance companies admitted and authorized to write such insurance in the State, or as otherwise approved by the Agency, and having an A.M. Best rating that is commercially reasonable and customarily required by other enterprises of like size and type as that of the Company. The Agency may change such rating requirements on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage. At least once every two fiscal years, the Company agrees to deliver a certificate of an independent insurance consultant to the Agency

which indicates that the insurance then maintained by the Company meets the requirements of Section 4.5(a) hereof.

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

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

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

(iii) provide that in respect of the interests of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company (other than nonpayment of premium) or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

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

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, such cancellation shall not be effective as to the Agency until at least thirty (30) days, or ten (10) days due to nonpayment of premium, after receipt by the Agency of written notice by such insurers of such cancellation;

(vi) 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

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

(d) The Company shall deliver or cause to be delivered to the Agency, in a form reasonably acceptable to the Agency, the following documents evidencing compliance with the insurance requirements of this Section 4.5: (i) on or prior to the Closing Date: (A) a broker's certificate of coverage, upon which the Agency may conclusively rely in order to confirm compliance with the requirements of this Section 4.5(d), confirming that the Company, as of the Closing Date, has obtained insurance in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of other required

insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) business days prior to the expiration of any such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Company further agrees that if the Company itself allows, or is notified by an insurer that the Company has allowed, any insurance policy required by this Section 4.5 to lapse or expire, or if there be any reduction in amount or any material change in the coverage with respect to the Agency below that which is required by this Section 4.5, or if an insurance policy is cancelled for any reason whatsoever, including without limitation the Company's failure to pay any accrued premium, the Company shall deliver prompt written notice to the Agency at least ten (10) days prior to the effective date of the lapse, expiration, cancellation, reduction or other material change of such insurance policy.

(e) The Company shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Company 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.

(f) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESSES OR INTERESTS OF THE COMPANY.

Section 4.6. Advances by Agency. In the event the Company fails to make any payment or perform or observe any obligation required of it under Sections 4.5 or 6.20 of this Agreement, the Agency, after first notifying the Company in writing of any such failure on its part (except that no prior notification of the Company shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Company will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Installment Purchase Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7. Compliance with Legal Requirements. The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply (and shall use diligent good faith efforts to cause all Tenants and other occupants and users of the Facilities to observe and comply) with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Company, the Facilities, any Tenant, occupant, user or operator of the Facilities 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 Company will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facilities or any part thereof. The Company 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 by the Company (or any other Person occupying, operating or using the Facilities or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

The Company may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facilities 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 Company or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith (provided, however, that in the event the Mortgagee shall require the furnishing of security by the Company in connection with a contest of any such Legal Requirement, the Agency shall not require that any additional security be furnished).

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 Facilities shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Company and those authorized to exercise such right, or if the temporary use of the Facilities 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 Facilities,

(ii) there shall be no abatement, postponement or reduction in the Installment Purchase Payments payable by the Company under this Agreement or any other Project Document to which it is a party, and

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

(b) In the event a Loss Event shall occur, the Company shall, to the extent required under and in accordance with the applicable provisions of the Ground Lease, at its own cost and expense (except to the extent paid from the Net Proceeds), rebuild, replace, repair or restore the Facilities, and the Company shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Installment Purchase Payments payable by the Company under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced.

(c) All rebuilding, replacements, repairs or restorations of the Facilities in respect of or occasioned by a Loss Event shall

(i) automatically be deemed a part of the Facilities and shall be subject to this Agreement,

(ii) not change the nature of the Facilities as Approved Facilities and a qualified "project" as defined in the Act,

(iii) be made in compliance with the Ground Lease, and

(iv) be effected with due diligence in a good and workerlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor.

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facilities shall be evidenced to the Agency by a certificate of an Authorized Representative of the Company stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses

in connection therewith have been paid for or arrangement for payment has been made, (iii) that the Facilities have been rebuilt, replaced, repaired or restored in accordance with the applicable provisions of the Ground Lease, (iv) that all property of the Facilities is subject to this Agreement, and (v) that the restored Facilities are ready for occupancy, use and operation for their intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights against third parties by the Company that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) certificate(s) of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Company will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facilities for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facilities any mechanic's, materialmen's or any other Lien in connection with the rebuilding, replacement, repair and restoration of the Facilities and that there exist no encumbrances on or affecting the Facilities or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) Upon the Company's request and at the sole cost and expense of the Company, the Agency shall cooperate with the Company in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, provided, however, that any settlement, compromise, arbitration or adjustment of any such claim or demand shall be made by the Company in its sole discretion.

(f) The Company 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. Dissolution of Company; Restrictions on Company. The Company covenants and 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 subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Closing Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Company, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if, (i) the Company is the surviving, resulting or transferee entity, and (1) in the opinion of an Independent Accountant has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Company immediately prior to such consolidation, merger or transfer, (2) is an Affiliate of the Parent, and (3) is an Approved Transferee, or (ii) the Company is not the surviving, resulting or transferee entity and (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, (C) is an Approved Transferee, (D) is an Affiliate of the Parent, and (E) assumes in writing all of the obligations of the Company contained in this Agreement and all other Project Documents to which the Company shall be a party, (2) the Company delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Company shall be a party constitute the legal, valid and binding obligations of such successor Company and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Company, and (3) in the opinion of an Independent Accountant, such successor Company has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Company immediately prior to such merger, consolidation, sale or transfer.

The Company further represents, covenants and agrees that (i) the Company is and throughout the term of this Agreement will continue to be an Affiliate of the Parent, and (ii) it does not and throughout the term of this Agreement will not constitute a Prohibited Person.

Nothing contained in this Section 6.1 shall be deemed to limit the ability of those Persons, direct or indirect, as shall own an interest in the Company, to sell or transfer any such ownership interest, provided, that, the Company shall continue to be Controlled by the Parent.

Section 6.2. Indemnity. (a) The Company shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant or agent (excluding for this purpose the Company, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Agency's

control or supervision (collectively, the “**Indemnified Parties**” and each an “**Indemnified Party**”) harmless of, from and against any and all claims (whether in tort, contract or otherwise), 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 from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from August 8, 2006, 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 upon, about, or in any way connected with the Facilities, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facilities or the Project,
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facilities, or any defects (whether latent or patent) in the Facilities,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facilities or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Company or any other Person of, or performance by an Indemnified Party, the Company or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project 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 Facilities, including, but not limited to, any injury for which Specific Coverage under Section 4.5(a) above applies to the Company and/or an Affiliate, but not to the Agency,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not 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 Company 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 Company, or (C) any other Person who may be in or about the premises of the Facilities,
- (viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as defined in Section 6.2(d) below) that are on, from, or affecting the Facilities; 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 policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses,

(ix) any Claim in connection with the execution, delivery, recording, performing or enforcing of any Mortgage; or

(x) 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 (ix) of this Section 6.2(a).

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

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Company 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 Company or any other obligor under any of the Project Documents with respect to any of such matters above referred to; provided, however, the release by the Company shall not extend to any Claims or Liability arising from or incurred as a result of action taken by such Indemnified Party pursuant to Section 4.6 hereof. In the event an Indemnified Party (i) shall have taken action pursuant to Section 4.6 hereof, (ii) the Claim or Liability shall have arisen from or have been incurred as a result of the gross negligence or willful misconduct of such Indemnified Party in effecting such action pursuant to Section 4.6 hereof, and (iii) shall be an independent contractor employed by the Agency, the Agency shall assign to the Company all rights of action it may have against such independent contractor by reason of the gross negligence or willful misconduct of such independent contractor resulting in such Claim or Liability. An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2.

(c) (i) In addition to and without being limited by any other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials on, from, or affecting the Facilities in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(ii) Without limiting the foregoing, the Company shall not cause or permit the Facilities 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 Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any occupant or user of the Facilities, a release of Hazardous Materials onto the Facilities or from the Facilities onto any other property.

(iii) The Company shall comply with, and require and enforce compliance by, all occupants and users of the Facilities with all applicable Legal Requirements pertaining to Hazardous Materials, and shall obtain and comply with, and ensure that all occupants and users of the Facilities obtain and comply with, any and all approvals, registrations or permits required thereunder.

(iv) The Company shall (A) 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 Facilities, in accordance with the orders and directives of all Federal, state and local governmental authorities as may be applicable to the Facilities, and (B) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (except to the extent that any of the foregoing is the result of the gross negligence or willful misconduct of such Indemnified Party) of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release or threatened release of any Hazardous Materials which are on, from or affecting the Facilities, (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (y) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities or the Agency, which are based upon or in any way related to such Hazardous Materials, including without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses.

(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) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the general 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 Company (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 Company at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Company may have to any Indemnified Party in any other agreement or at common law, and 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.

(f) Each Indemnified Party, as appropriate, shall reimburse the Company for payments made by the Company pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by it from any insurance with respect to any Liability. At the request and expense of the Company, each Indemnified Party shall have the duty to claim any such insurance proceeds and such Indemnified Party shall assign its rights to such proceeds, to the extent of such required reimbursement, to the Company.

(g) The Company shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses; provided, however, that counsel employed by the Company shall be acceptable in the reasonable judgment of the Indemnified Party. Each Indemnified Party shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party unless (i) the employment of such counsel has been specifically authorized by the Company, in writing, or (ii) the Company has failed to assume the defense and to employ counsel, or (iii) a conflict of interest shall be reasonably determined to exist by such Indemnified Party, or (iv) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and the Company, and the Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Company (in which case, if such Indemnified Party notifies the Company in writing that it elects to employ separate counsel at the Company's expense, the Company shall not have the right to assume the defense of the action on behalf of such Indemnified Party).

(h) Each Indemnified Party shall use reasonable efforts to cooperate with the Company in the defense of any Claim. The Company shall not be liable for any settlement of any Claim without its consent but, if any such Claim is settled with the consent of the Company or there be final judgment for the plaintiff in any such action or with respect to any such Claim, the Company shall indemnify and hold harmless the Indemnified Party from and against any Liability by reason of such settlement or judgment as provided in subsection (a) of this Section.

Section 6.3. Compensation and Expenses of the Agency. The Company shall pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Project Counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Closing Date, the Company shall pay to the Agency its fee of \$696,500 (said amount representing the \$694,000 financing fee, plus the first installment of an annual

administrative fee of \$5,000.00, less an application fee of \$2,500.00), payment of which has been received on the Closing Date. The Company further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$5,000.00 payable on each anniversary of the Closing Date until the termination of this Agreement.

Section 6.4. Retention of Interest in Facilities. The Company shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its leasehold estate in the Facilities or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 6.1 or 9.2 hereof, without the prior written consent of the Agency and any purported disposition without such consent of the Agency shall be void.

Section 6.5. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), 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 Facilities or any part thereof or the interest therein of the Agency or the Company or against any of the Installment Purchase Payments payable under this Agreement or the interest of the Agency or the Company under this Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Company forthwith upon 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 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 Facilities.

(b) The Company may at its sole expense contest (after prior written notice to the Agency), 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 Facilities or any part thereof or interest therein, or in the IDA Lease or in this Agreement, of the Agency or the Company or against any of the Installment Purchase Payments payable under this Agreement, (2) neither the Facilities nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company nor the Agency 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 Company shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency (provided, however, that in the event the Mortgagee shall require the furnishing of security by the Company in connection with a contest of any such Lien, the Agency shall not require that any additional security be furnished).

Section 6.6. No Warranty of Condition or Suitability. THE AGENCY 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 FACILITIES, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITIES, OR THE SUITABILITY OF THE FACILITIES FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ITS TENANTS OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE COMPANY IS SATISFIED THAT THE FACILITIES ARE SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITIES 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 6.7. Financial Statements; No-Default Certificates. (a) Upon request of the Agency, the Company shall deliver or cause to be delivered to the Agency, a copy of the most recent annual audited financial statements of the Company and of the Parent and of their respective subsidiaries, if any (including balance sheets as of the end of the Fiscal Year of the Company and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position), for such Fiscal Year, prepared in accordance with generally accepted accounting principles consistently applied, certified by an Independent Accountant.

(b) Upon request of the Agency (but not more than once in any calendar year), the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company (i) as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Company was in compliance with all the provisions that relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, 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 Company with respect thereto; and (ii) that the insurance the Company maintained 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 calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Company either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder or under any other Project Document, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Company shall immediately notify the Agency of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company 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 Company shall state this fact on the notice.

Section 6.8. Employment Information, Opportunities and Guidelines.

(a) At all times during the maintenance and operation of the Facilities, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use (y) its best efforts to ensure that employees and applicants for employment with the Company, and (z) commercially reasonable efforts to ensure that employees and applicants for employment with any Tenant of the Facilities, are in each case 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 Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Company shall furnish to the Agency all information reasonably 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) Annually, by August 1 of each year, commencing August 1, 2007, until the termination of this Agreement, the Company 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 B attached hereto, certified as to accuracy by an Authorized Representative of the Company, and shall attach thereto a copy of the Company's final payroll report evidencing the total number of employees employed by the Company during such reporting period. In addition, upon termination of this Agreement, the Company shall submit to the Agency an employment report with respect to both the Company and, where so stated, the Tenants, substantially in the form of Schedule B hereto, certified as to accuracy by an Authorized Representative of the Company, and shall attach thereto a copy of the Company's final payroll report evidencing the total number of employees employed by the Company during the most recent period commencing July 1 of the previous year and ending June 30 of the year of the obligation of filing such report.

(e) 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 Act of 1998 (P.L. No. 105-220) in which the Facilities are located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to

consider first, and cause each of its Affiliates at the Facilities to consider first, persons eligible to participate in the Workforce Investment 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.

(f) 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 Agency and/or the 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 Company and the Tenants and the employees of the Company and the Tenants to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Company shall provide to the Agency any employment information in the possession of the Company (including any employment information with respect to the Tenants which the Company has received, it being agreed that, upon the Agency’s written request therefor, the Company shall request any such information from the Tenants and shall use good faith efforts to cause the Tenants to deliver any such information to the Company), which in each case is pertinent to the Company and the Tenants and their respective employees, to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 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 Company, 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 48 of 2005, (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.

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

Section 6.9. Further Assurances. Each of the Agency and the Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Company, as the requesting party deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the requesting party hereunder.

Section 6.10. Recording and Filing. This Agreement or a memorandum hereof shall be recorded by the Company 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.

Section 6.11. Further Encumbrances. The Company shall not create, permit or suffer to exist any mortgage (other than Permitted Mortgages), encumbrance, Lien, security interest, claim or charge against the Facilities or any part thereof, or the interest of the Company in the Facilities or the IDA Lease or this Agreement, except for Permitted Encumbrances.

Section 6.12. Subtenant Survey. The Company shall file with the Agency by January 1 of each year, commencing January 1, 2007, a certificate of an Authorized Representative of the Company with respect to all subtenancies in effect at the Facilities, in the form attached hereto as Schedule C.

Section 6.13. Location and Contact Information Form. The Company shall file with the Agency by July 31 of each year, commencing July 31, 2007, the Location and Contact Information Form set forth in Schedule D hereto.

Section 6.14. Reporting as to Prohibited Persons. The Company shall file with the Agency by August 1 of each year, commencing August 1, 2007, a certification, in the form set forth as Schedule E hereto, that (i) the Company is not a Prohibited Person, (ii) the Company does not Control a Prohibited Person, (iii) none of the members or Principals of any members of the Company is a Prohibited Person, and (iv) none of the Principals of the Company or any entity or Person which Controls the Company or the Principals of the Company is a Prohibited Person.

Section 6.15. Restriction Against Prohibited Persons. If at any time during the term of this Agreement, the Company, any member of the Company, or any Principal of the Company, shall become a Prohibited Person or shall Control a Prohibited Person, the Company shall remedy or cause such entity to remedy the condition which resulted in the Company or such entity becoming or Controlling a Prohibited Person. In the case where the Company obtains knowledge that a Major Tenant has become a Prohibited Person while in occupancy of the Facilities, the Company shall use all commercially reasonable good faith efforts to cause such Major Tenant to remedy the condition which resulted in the Major Tenant becoming a Prohibited Person.

Section 6.16. Organizational Chart. The Company represents and warrants to the Agency that set forth in Schedule F hereto is an organizational chart detailing the current ownership structure of the Company, its members, Affiliates, parent companies and related entities, including its relation to the Parent, and all Employee Owners. The organizational chart further sets forth the relative percentages of ownership in the Company. The Company shall promptly deliver written notice to the Agency of any change in such chart, including, without limitation, any change by which the Company shall cease to be an Affiliate of the Parent. Upon request by the Agency, the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company as to whether the information set forth in such chart continues to be accurate and complete, and if not, the changes necessary to make such chart accurate and complete.

Section 6.17. Covenants with Respect to the Ground Lease. (a) The Company covenants and agrees that it shall not enter into an amendment, supplement or modification to the Ground Lease that would materially and adversely affect the interests of the

Agency under the Project Documents without the prior written consent of the Agency; provided, however, that any severance under the Ground Lease of the "Hotel Site" (as described in Exhibit B attached hereto) shall not require the prior written consent of the Agency.

(b) The Company agrees to observe and comply with all of its payments and all of its material obligations, covenants and agreements set forth in the Ground Lease and further agrees to promptly transmit to the Agency copies of any termination or default notice it shall receive from, or deliver to, the City and/or EDC under the Ground Lease.

(c) The Company covenants and agrees that, subject to the provisions of Sections 6.1 and 9.2(a) hereof, it shall remain the tenant under the Ground Lease throughout the term of this Agreement.

Section 6.18. Satisfaction and Discharge of Certain Mortgage-Secured Indebtedness. The Company acknowledges and agrees that the mortgage recording tax exemption relative to the Building Loan Mortgage and the Project Loan Mortgage is not intended to continue (whether by assignment, refinancing or otherwise) relative to the Underlying Indebtedness of such Loans beyond the Expiration Date. Therefore, on the Expiration Date, the Company shall either (y) deliver to the Agency evidence reasonably satisfactory to the Agency that mortgage satisfactions in form acceptable for recording in respect of the underlying mortgage indebtedness represented by the Building Loan Notes and by \$60,821,697 in principal amount of the Project Loan Notes (and any refinancings thereof) have been recorded in the appropriate office of the Register of The City of New York, or (z) pay to the Agency the amounts required under Section 8.1 hereof to terminate this Agreement (including the Benefit Amount, as defined in Section 8.3 hereof) and deliver to the Agency evidence that executed releases of the Agency from all Mortgages have been recorded in the appropriate office of the Register of The City of New York.

Section 6.19. Employee Owners of the Company. The Company represents that attached hereto as Schedule G-1 is a complete and accurate list of all Employee Owners and the relative percentage amount of such beneficial interests as measured against 100%. The Company shall file with the Agency by August 1 of each year, commencing August 1, 2007, and, upon written request of the Agency, a certification, in the form set forth as Schedule G-2 hereto, setting forth all Employee Owners and the relative percentage amount of such beneficial interests as measured against 100%.

Section 6.20. Environmental Remediation. (a) The Company shall (i) enter into a Brownfield Cleanup Agreement ("BCA") with the New York State Department of Environmental Conservation ("NYSDEC"), (ii) obtain approval of, and shall implement a Remedial Action Work Plan to address and/or remediate the presence of Hazardous Materials at the Facilities, and (iii) promptly deliver to the Agency a copy of the Certificate of Completion under the BCA upon its issuance, as well as copies of any Health and Safety Plan filed by or on behalf of the Company, if required by NYSDEC.

(b) The Company shall, at its sole cost and expense, conduct and complete (i) all investigations, studies, surveys, sampling and testing of all lead-based paint (if any) at the Improvements to be demolished, and shall adopt a health and safety plan regarding remediation

and/or removal of any such lead-based paint, in accordance with all applicable Legal Requirements, on or before the date when demolition commences, and (ii) all remedial, removal and other actions necessary to clean up and remove all lead-based paint on, from, or affecting the Improvements to be demolished (if any), in accordance with all applicable Legal Requirements, and (iii) documentation of any and all such surveys and/or remediation, which the Company shall provide to the Agency prior to the commencement of demolition and/or construction of the Approved Facilities.

(c) The Company shall, at its sole cost and expense, survey and remove all asbestos containing materials on, from, or affecting the Improvements to be demolished (if any), and shall undertake any remediation related to the removal of such materials, so as to comply with NYSDEC and New York City Department of Environmental Protection ("NYCDEP") rules and regulations and all other applicable federal, state and local laws, ordinances, rules, regulations and Legal Requirements appertaining thereto. The Company shall provide to the Agency evidence acceptable to the Agency of such removal and remediation conforming to applicable NYSDEC and NYCDEP rules and regulations promptly upon completion.

(d) The Company shall, at its own cost and expense decommission and formally register the closing of underground storage tanks (if any) located on the Facilities and shall provide to the Agency a Closure Report issued by NYSDEC, evidencing that in compliance with all applicable Legal Requirements, both (i) the tank has been properly closed or removed from the Facilities, and (ii) adjacent soil and ground water if contaminated, has been removed or otherwise remediated to the extent required by NYSDEC.

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 Company to pay any Installment Purchase Payment within ten (10) days of the due date thereof;

(b) Failure of the Company to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.4, 6.8, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 7.6, 8.3, 9.2 or 9.7 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency; or

(c) Failure of the Company to observe and perform any covenant or agreement on its part to be performed under Section 4.5 hereof and continuance of such failure for a period of ten (10) days after receipt by the Company of written notice specifying the nature of such default from the Agency;

(d) Failure of the Company 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), (b) or (c) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company 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;

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

(f) A proceeding or case shall be commenced, without the application or consent of the Company or the Parent 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 Company or the Parent or of all or any substantial part of its respective assets, or (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 shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Company or the Parent shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Company or the Parent as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

(g) Any representation or warranty made by the Company or the Parent (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) herein or in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made; or

(h) An "Event of Default" under the Guaranty Agreement 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 and be continuing, the Agency may bring an action for damages, injunction or specific performance or take whatever action at law or in equity as may appear necessary or desirable to collect the Installment Purchase Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement; provided, however, that the Agency shall not make any claim or bring any action for payment of the Benefit Amount (as defined in Section 8.3 hereof) by the Company other than as specifically set forth in Section 8.3 hereof.

The Agency and the Company acknowledge and agree that in no event shall this Agreement constitute a Lien or encumbrance on the Facilities, nor shall any such Lien or encumbrance arise in connection with the breach of any term or condition hereof or otherwise. Pursuant to this Agreement, the Agency has sold, conveyed, transferred and assigned to the Company the Agency's leasehold interest under the IDA Lease in the Facilities. Without limiting the generality of the foregoing, neither the Agency nor the Company intend that the possessory rights of any Person (including, without limitation, any Tenant) shall be disturbed on account of the existence of this Agreement, the breach of any term or condition hereof or the exercise by any party of any right or remedy hereunder.

No action taken pursuant to this Section 7.2 shall relieve the Company from the Company's obligations hereunder, including without limitation, the obligations of the Company under Sections 6.2, 7.6, 8.3 and 9.12 hereof, all of which shall survive any such action.

Section 7.3. Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency 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 Company 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 Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 7.4. 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 the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

Section 7.5. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Agency should employ outside attorneys or incur other out-of-pocket expenses for the collection of the Installment Purchase Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII

RECAPTURE OF BENEFITS

Section 8.1. Option of Company to Terminate Agreement. The Company shall have the option to terminate this Agreement at any time during the term of this Agreement prior to the Expiration Date, and shall exercise such option by

(i) delivering a written notice of an Authorized Representative of the Company to the Agency setting forth the date (the "Termination Date") upon which such termination is to be effected (which Termination Date shall be at least ten (10) business days after the date of delivery of such notice),

(ii) paying to the Agency in legal tender, on or before such Termination Date, the Benefit Amount (as defined in Section 8.3 hereof) and all other amounts due and payable to the Agency under this Agreement and the Guaranty, and

(iii) delivering to the Agency evidence of the due recording in the appropriate office of the Register of The City of New York of releases releasing the Agency from all Mortgages.

Upon the satisfaction of all of the conditions set forth above, this Agreement shall terminate, subject, however, to the survival of the obligations of the Company under Sections 6.2 and 9.12 hereof.

Section 8.2. Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, including Section 8.1 hereof, on or after the Expiration Date, or upon receipt of sixty (60) days prior written notice of the Agency requesting termination as of a date occurring on or after the Expiration Date, the Company shall terminate the IDA Lease, the Guaranty Agreement and this Agreement by (y) delivering to the Agency evidence of the due recording in the appropriate office of the Register of The City of New York of releases releasing the Agency from all Mortgages, and (z) satisfying all payments, obligations, covenants and agreements under this Agreement and the Guaranty Agreement, and thereupon the Company and the Agency shall terminate the IDA Lease, the Guaranty Agreement (except as provided in Section 2.9 thereof and except to the extent that any of the Guaranteed Obligations, as such term is defined in the Guaranty Agreement, are stated to survive the termination of this Agreement) and this Agreement (subject, however, to the survival of the obligations of the Company under Sections 6.2 and 9.12 hereof) and such termination shall forthwith become effective.

Section 8.3. Recapture of Agency Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Company for the Project in the form of mortgage recording tax exemption and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a) If during the term of this Agreement, for any reason whatsoever, (i) the tenant under the Ground Lease is no longer Controlled by the Parent, or (ii) less than fifty

percent (50%) of the beneficial ownership interest of the tenant under the Ground Lease is owned by the Parent or by any combination of the Parent and up to twenty percent (20%) by Employee Owners, then, the Company shall pay to the Agency as a return of public benefits conferred by the Agency, an amount equal to the exemption from applicable mortgage recording tax exemption provided by the Agency with respect to the recordation of the Building Loan Mortgage and the Project Loan Mortgage, which amount the Agency and the Company agree is \$11,200,000 (the "Benefit Amount"), together with interest on the Benefit Amount from the Closing Date through the date of payment at the annual rate of seven and three-quarters percent (7 $\frac{3}{4}$ %) per annum.

(b) If, by the earlier of (i) the seventh (7th) anniversary of the Closing Date, and (ii) the date the Company shall have delivered the certificate referred to in Section 2.2(d) hereof, the actual developed square footage by the Company of the Approved Facilities shall be less than 900,000 square feet, the Company shall

(x) promptly deliver written notice of such fact to the Agency accompanied by a certificate of an Authorized Representative of the Company certifying as to the actual amount of square footage developed by the Company at the Approved Facilities (the "Developed Footage"), and

(y) pay to the Agency an amount computed in accordance with the following formula: the Benefit Amount multiplied by $[(900,000 \text{ less the Developed Footage}) \div 900,000]$ plus interest on the resultant amount from the Closing Date through the date of payment at the annual rate of seven and three-quarters percent (7 $\frac{3}{4}$ %) per annum. For example, if the Developed Footage is 810,000 square feet, the Company shall pay to the Agency the Benefit Amount times a fraction equal to $90,000/900,000$ or $1/10$ times the Benefit Amount or \$1,120,000, plus interest on the resultant amount at the rate and from the Closing Date as described above.

(c) If the Company shall fail to deliver to the Agency any of the information required by Section 6.8, 6.12, 6.16, 6.19 or 9.2(b)(ii) hereof, and such failure shall continue for a period of thirty (30) days after the effective date (as determined in accordance with Section 9.4 hereof) of written notice from the Agency, which notice must include notice by registered or certified mail given in accordance with Section 9.4 hereof, specifying the nature of such failure, then, notwithstanding Section 7.1, 7.2 or 9.2 hereof, the Company, upon written demand therefor by the Agency delivered after such thirty (30) day period, shall promptly pay to the Agency the Benefit Amount together with interest on the Benefit Amount from the Closing Date through the date of payment at the annual rate of seven and three-quarters percent (7 $\frac{3}{4}$ %) per annum.

(d) Reference is hereby made to Section 9.2(b)(iii), which obligates the Company to make a partial repayment of the Benefit Amount in accordance with the provisions set forth therein.

(e) The obligation of the Company to make any payments pursuant to paragraphs (a), (b) or (c) of this Section 8.3 or Section 9.2(b)(iii) hereof shall be independent of each other, and the making of any one such payment shall not relieve the Company from its obligation to make any other applicable payment; provided, however, that in no event shall the

Company be obligated to make payments which aggregate more than one hundred percent (100%) of the Benefit Amount, plus the interest due thereon as calculated pursuant to each Section obligating the Company to make a payment.

(f) The Company covenants and agrees to furnish the Agency with written notification promptly following the occurrence of any event described in Section 8.3(a) or (b) above, which notification shall set forth the details of such event.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Company to make the Installment Purchase Payments required under the terms hereof, or to comply with Section 4.5 or 6.2 hereof, or to comply with any reporting obligations hereunder), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Company shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Company shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Company.

Section 9.2. Assignment or Sublease. (a) The Company shall not at any time assign or transfer this Agreement, without the prior written consent of the Agency (which consent may be withheld by the Agency in its absolute discretion); provided further, that (x) no such consent shall be required in the case of an assignment or transfer of this Agreement effected by reason of a transaction permitted under Section 6.1 hereof, and (y) if the Agency consents to any such assignment or transfer (1) the Company shall nevertheless remain liable to the Agency for the payment of all Installment Purchase Payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (2) any assignee or transferee of the Company in whole of all of the Facilities (A) shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Company to be kept and performed, (B) shall be jointly and severally liable with the Company for the performance thereof, (C) shall be subject to service of

process in the State, (D) shall be an Approved Transferee, and (E) if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment or transfer shall not legally impair in any respect the obligations of the Company for the payment of all Installment Purchase Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Company shall be a party, nor impair or limit in any respect the obligations of any obligor (including, without limitation, the Parent) under any other Project Document, (4) any assignee or transferee shall utilize the Facilities as Approved Facilities and as a qualified "project" within the meaning of the Act, (5) such assignment or transfer shall not violate any provision of this Agreement or any other Project Document, (6) such assignment or transfer shall in no way diminish or impair the Company's obligation to carry the insurance required under Section 4.5 of this Agreement, and the Company shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, (7) the Parent shall have executed and delivered to the Agency a written re-confirmation of its obligations under the Guaranty Agreement, and (8) each such assignment or transfer contains such other provisions as the Agency may reasonably require. The Company shall furnish or cause to be furnished to the Agency a copy of any such assignment or transfer in substantially final form at least twenty (20) days prior to the date of execution thereof.

Any consent by the Agency to any act of assignment or transfer shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency consent to any other or subsequent assignment or transfer, or as modifying or limiting the rights of the Agency.

(b) The parties hereto acknowledge that the Company intends to sublease the Facilities to commercial tenants but such subletting shall be effected only as permitted under this Section 9.2.

(i) The Company may enter into a proposed Tenant Lease (excluding the Existing Tenant Leases) only if such proposed Tenant Lease obligates the Tenant to provide to the Company the applicable information that the Company needs in order to satisfy the reporting requirements of Sections 6.8 and 6.12 hereof and Sections 9.2(b)(ii)(2) and 9.2(b)(ii)(4) hereof, and includes a representation from the Tenant stating either of the following: (A) that such Tenant's occupancy at the Facilities will not result in the removal of a plant or facility of such Tenant located outside of the City, but within the State, to the Facilities or in the abandonment of one or more of such plants or facilities of such Tenant located outside of the City but within the State or (B) that such Tenant's location at the Facilities is reasonably necessary to discourage such Tenant from removing its business to a location outside of the State or is reasonably necessary to preserve such Tenant's competitive position in its industry. The Agency hereby acknowledges and agrees that the conditions and requirements set forth in this Section 9.2(b) (other than the condition set forth in Section 9.2(b)(iv), which shall apply) shall not be applicable to the Existing Tenant Leases.

The Company may, with respect to any proposed Tenant Lease, request the Agency, in writing, to determine whether (A) such Tenant's location at the Facility is reasonably

necessary to discourage such tenant from removing its business to a location outside of the State or (B) such Tenant's location at the Facility is reasonably necessary to preserve such Tenant's competitive position in its industry or whether neither "(A)" or "(B)" is the case. If such a request is made, the Company shall provide, or cause to be provided, to the Agency any information which the Agency reasonably requests to enable the Agency to make such determination. The Agency shall make a determination within thirty (30) days of receipt by the Agency of the requested information and such determination shall be evidenced by a certificate of an Authorized Representative of the Agency.

(ii) Promptly following the execution of each Tenant Lease (other than an Existing Tenant Lease), the Company shall deliver to the Agency:

(1) written notice of such Tenant Lease setting forth the name of the Tenant, the square footage of the Facilities which shall be demised under such Tenant Lease, the intended use of the demised premises, and the term of such Tenant Lease (including any renewal options);

(2) a certificate of an Authorized Representative of the Company to the effect that, to the best of its knowledge, and based in part upon a representation of such Tenant, either (A) such Tenant's occupancy of the Facilities will not result in the removal of a plant or facility of such Tenant located outside of the City (but within the State) to the Facilities or in the abandonment of one or more of such plants or facilities of such Tenant located outside of the City (but within the State), or (B) such Tenant's location at the Facilities is reasonably necessary to discourage such Tenant from removing its business to a location outside of the State or is reasonably necessary to preserve such Tenant's competitive position in its industry;

(3) a certificate of an Authorized Representative of the Company to the effect that the Tenant Lease obligates the Tenant to timely provide to the Company the information that the Company needs in order to satisfy the reporting requirements of the Company under Sections 6.8 and 6.12 hereof and Sections 9.2(b)(ii)(2) and 9.2(b)(ii)(4) hereof; and

(4) a certificate of the Authorized Representative of the Company to the effect that, to the best of its knowledge, and based in part upon a representation of such Tenant, neither such Tenant, nor any Person which controls such Tenant, nor any Principals of such Tenant, is a Prohibited Person.

Upon the Agency's request, the Company shall deliver to the Agency a copy of the current form of any Tenant Lease.

(iii) The Company may enter into not more than one Tenant Lease with the City or any agency or department thereof, provided that (1) such Tenant Lease covers not more than 0.5% of the gross square footage of the Project (957,500 or such other amount resulting from a modification made pursuant to Section 2.2(f) hereof), and (2) prior to or simultaneously with the execution of any such Tenant Lease, the Company

shall remit to the Agency an amount equal to the product of the Benefit Amount and a fraction, the numerator of which shall equal the gross square footage of the premises subject to such Tenant Lease and the denominator of which shall equal 957,500 or such other amount of gross square feet resulting from a modification made pursuant to Section 2.2(f) hereof, together with interest on such amount from the Closing Date through the date of payment at the annual rate of seven and three-quarters percent (7 $\frac{3}{4}$ %) per annum.

(iv) Nothing contained in this Section 9.2(b) shall be deemed to require the prior consent of the Agency for any amendment, modification or supplement to a Tenant Lease (other than Existing Tenant Leases), provided that such Tenant Lease continues to include the provisions required under this Section 9.2(b). The consent of the Agency shall not be required for any amendment, modification or supplement to an Existing Tenant Lease, provided that no such amendment, modification or supplement adversely affects the ability of the Company to meet its reporting obligations pursuant to Section 6.8 hereof.

Section 9.3. Amendments. This Agreement may be amended only by a written instrument executed and delivered by the parties hereto and consented to by the Parent.

The Agency acknowledges that the Company (or an Affiliate thereof) has submitted an application to the Agency requesting that the Agency issue its enterprise zone bonds to finance that portion of the Project constituting the garages. Should that application be approved, which approval remains within the discretion of the Agency, the Agency agrees that nothing contained in this Agreement shall prevent the Agency from entering into such amendments to this Agreement as shall be necessary to facilitate such bond financing.

Section 9.4. Notices. All notices, requests, consents, demands and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party addressed to it at its address or facsimile number set forth below or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party. Each such notice, request, consent or demand or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified below and the appropriate answer back or confirmation of receipt is received, (ii) if given by registered or certified mail, three (3) business days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below. If any notice given pursuant to this Agreement is given by two or more of the methods set forth in the immediately preceding sentence, such notice shall be effective on the earliest date as determined in accordance with the immediately preceding sentence.

<u>Party</u>	<u>Address</u>
Company	BTM Development Partners, LLC c/o The Related Companies, L.P. 60 Columbus Circle, 19 th Floor New York, New York 10023 Attention: Glenn Goldstein, Executive Vice President Telephone: (212) 801-1082 Facsimile: (212) 801-3728
with a copy to:	Greenberg Traurig, LLP 200 Park Avenue New York, New York 10166 Attention: Robert J. Ivanhoe, Esq. Telephone: (212) 801-9333 Facsimile: (212) 801-6400
Agency	New York City Industrial Development Agency 110 William Street New York, New York 10038 Attention: General Counsel (with a copy to the Executive Director of the Agency at the same address) Telephone: (212) 312-3563 Facsimile: (212) 312-3912

Section 9.5. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Facilities, other than the IDA Lease and the Guaranty Agreement.

Section 9.6. 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 9.7. Inspection of Facilities. The Company will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facilities, but solely for the purpose of (x) determining whether an event described in Section 8.3 hereof has occurred, (y) assuring that the Company is operating the Facilities, or is causing the Facilities to be operated, as Approved Facilities and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facilities and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facilities as such latter obligation is and shall remain solely the obligation of the Company.

Section 9.8. Effective Date; Counterparts. This Agreement shall become effective upon its delivery on the Closing Date. 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 9.9. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Company and their respective successors and assigns.

Section 9.10. Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties to this Agreement.

Section 9.11. Law Governing. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.**

Section 9.12. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facilities 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 9.13. Recourse Under This Agreement. 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, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Company hereunder.

Section 9.14. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Closing Date.

Section 9.15. Subordination of Agreement. This Agreement shall be subordinate in its real property interest in the Facilities to the Con Ed Easement. The Company shall have the right to execute, deliver and file of record the Con Ed Easement. The Agency shall, at the sole cost and expense of the Company, execute and deliver any document and instrument (in recordable form) reasonably required by Con Ed to evidence and confirm such


subordination of this Agreement to the Con Ed Easement. Any such document and instrument may be filed of record against the Facilities and shall be deemed to be a Permitted Encumbrance.

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Kei Hayashi
Executive Director

BTM DEVELOPMENT PARTNERS, LLC,
a New York limited liability company

By:  _____
Glenn Goldstein
Executive Vice President

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

On the 11th day of September, in the year two thousand six, before me, the undersigned, personally appeared Glenn Goldstein, personally known to me or proved to me on the basis of satisfactory evidence to me 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 behalf of which the individual acted, executed the instrument.

Liora Tarlowe

Notary Public

LIORA TARLOWE
Notary Public, State of New York
No. 01TA6138255
Qualified in New York County
Commission Expires December 19, 2009

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

On the 11th day of September, in the year two thousand six, before me, the undersigned, personally appeared Kei Hayashi, 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/Commissioner of Deeds

DAVID SHELLEY
Notary Public - State of New York
No. 01SH6122387
Qualified in King County
My Commission Expires February 7, 2009

APPENDICES

Exhibit A

DESCRIPTION OF THE LAND

ALL THOSE CERTAIN PLOTS, PIECES OR PARCELS OF LAND SITUATE, LYING AND BEING IN THE BOROUGH OF BRONX, CITY & STATE OF NEW YORK BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF EAST 149TH STREET WITH THE WESTERLY LINE OF RIVER AVENUE (75 FEET WIDE) AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

1. ALONG SAID NORTHERLY LINE OF EAST 149TH STREET, NORTH 89 DEGREES - 49 MINUTES - 56 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT FORMED BY THE INTERSECTION OF THE AFOREMENTIONED NORTHERLY LINE OF EAST 149TH STREET WITH THE EASTERLY LINE OF GATEWAY CENTER BOULEVARD (F.K.A. EXTERIOR STREET, 100 FEET WIDE), THENCE;
2. ALONG SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD, NORTH 42 DEGREES - 10 MINUTES - 54 SECONDS WEST, A DISTANCE OF 285.61 FEET TO A POINT FORMED BY THE INTERSECTION OF SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD WITH THE SOUTHERLY LINE OF EAST 150TH STREET, THENCE;
3. ALONG A LINE RUNNING THROUGH THE BED OF EAST 150TH STREET, NORTH 42 DEGREES - 29 MINUTES - 19 SECONDS WEST, A DISTANCE OF 59.77 FEET TO A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF CROMWELL AVENUE (60 FEET WIDE) WITH THE NORTHERLY LINE OF EAST 150TH STREET, THENCE;
4. ALONG A LINE RUNNING THROUGH THE BED OF CROMWELL AVENUE, NORTH 49 DEGREES - 24 MINUTES - 42 SECONDS WEST, A DISTANCE OF 100.15 FEET TO A POINT FORMED BY THE EASTERLY LINE OF GATEWAY CENTER BOULEVARD (80 FEET WIDE) WITH THE WESTERLY LINE OF CROMWELL AVENUE, THENCE; THE FOLLOWING TWO (2) COURSES ALONG THE AFOREMENTIONED EASTERLY LINE OF GATEWAY CENTER:
5. NORTH 32 DEGREES - 31 MINUTES - 30 SECONDS WEST, A DISTANCE 1,041.09 FEET TO A POINT, THENCE;
6. NORTH 32 DEGREES - 48 MINUTES - 20 SECONDS WEST, A DISTANCE OF 389.14 FEET TO A POINT, THENCE; ,
7. ALONG A LINE THROUGH THE INTERIOR OF LOT 32, BLOCK 2539, NORTH 57 DEGREES - 25 MINUTES - 17 SECONDS EAST, A DISTANCE OF 17.91 FEET TO A POINT, THENCE; ALONG THE DIVIDING LINE BETWEEN LOT 32, BLOCK 2539 AND LOT 50, BLOCK 2539, THE FOLLOWING SEVEN (7) COURSES:
8. SOUTH 32 DEGREES - 49 MINUTES - 25 SECONDS EAST, A DISTANCE OF 99.66 FEET TO A POINT OF NON-TANGENT CURVATURE, THENCE;
9. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1,768.54 FEET, A CENTRAL ANGLE OF 2 DEGREES - 59 MINUTES - 22 SECONDS, AN ARC LENGTH OF 92.27 FEET, BEARING A CHORD OF NORTH 29 DEGREES - 19 MINUTES - 51 SECONDS WEST, A CHORD DISTANCE OF 92.26 FEET TO A POINT OF NON-TANGENCY, THENCE;
10. NORTH 57 DEGREES - 25 MINUTES - 17 SECONDS EAST, A DISTANCE OF 18.00 FEET TO A POINT, THENCE;
11. NORTH 38 DEGREES - 29 MINUTES - 56 SECONDS EAST, A DISTANCE OF 23.26 FEET TO A POINT, THENCE;
12. NORTH 57 DEGREES - 25 MINUTES - 17 SECONDS EAST, A DISTANCE OF 92.00 FEET TO A POINT OF CURVATURE, THENCE;

13. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 873.54 FEET, A CENTRAL ANGLE OF 13 DEGREES - 42 MINUTES - 25 SECONDS, AN ARC LENGTH OF 208.98 FEET, BEARING A CHORD OF NORTH 64 DEGREES - 16 MINUTES - 30 SECONDS EAST, A CHORD DISTANCE OF 208.48 FEET TO A POINT, THENCE;
14. NORTH 57 DEGREES - 35 MINUTES - 49 SECONDS EAST, A DISTANCE OF 14.46 FEET TO A POINT ON THE DIVIDING LINE BETWEEN LOTS 32 & 71, BLOCK 2539 (LANDS NOW OR FORMERLY OF METRO-NORTH/MTA, F.K.A. NEW YORK CENTRAL RAILROAD), THENCE;
15. ALONG SAID DIVIDING LINE BETWEEN LOTS 32 & 71, BLOCK 2539, SOUTH 58 DEGREES - 32 MINUTES - 38 SECONDS EAST, A DISTANCE OF 64.84 FEET TO A POINT, THENCE;
16. CONTINUING ALONG THE DIVIDING LINE BETWEEN LOTS 32 & 71, BLOCK 2539, ALONG THE NORTHERLY TERMINUS OF CROMWELL AVENUE AND ALONG THE DIVIDING LINE BETWEEN LOTS 86 & 92, BLOCK 2357, SOUTH 58 DEGREES - 17 MINUTES - 19 SECONDS EAST, A DISTANCE OF 476.92 FEET TO A POINT ON THE WESTERLY LINE OF RIVER AVENUE (75 FEET WIDE), THENCE; ALONG SAID WESTERLY LINE OF RIVER AVENUE, THE FOLLOWING TWO (2) COURSES:
17. SOUTH 04 DEGREES - 56 MINUTES - 47 SECONDS EAST, A DISTANCE OF 12.23 FEET TO A POINT, THENCE;
18. CONTINUING ALONG SAID WESTERLY LINE OF RIVER AVENUE AND THROUGH THE BEDS OF EAST 151ST STREET AND EAST 150TH STREET, SOUTH 12 DEGREES - 36 MINUTES - 25 SECONDS EAST, A DISTANCE OF 1,446.00 FEET TO THE POINT AND PLACE OF BEGINNING.

TOGETHER WITH THE BENEFITS OF THAT CERTAIN EASEMENT FOR INGRESS, EGRESS AND REGRESS AS CONTAINED IN MAP NO. 3, PARCEL NO. 4 AND 5 AND REFERENCED IN THAT CERTAIN NOTICE OF APPROPRIATION FILED BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION, RECORDED IN REEL 253, PAGE 1919.

Exhibit B

DESCRIPTION OF THE HOTEL SITE

METES & BOUNDS DESCRIPTION

**GATEWAY CENTER AT BRONX TERMINAL MARKET
HOTEL PARCEL
TENTATIVE LOT 65, BLOCK 2357 AND
PART OF LOT 32, BLOCK 2539
BOROUGH & COUNTY OF BRONX
CITY & STATE OF NEW YORK**

ALL THOSE CERTAIN PLOTS, PIECES OR PARCELS OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF BRONX, CITY & STATE OF NEW YORK BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**HOTEL PARCEL A1
(TENTATIVE LOT 65)**

BEGINNING AT A POINT ON THE DIVIDING LINE BETWEEN TENTATIVE LOT 65 AND THE SOUTHWESTERLY LINE OF METRO NORTH/MTA, SAID POINT BEING DISTANT THE FOLLOWING FOUR (4) COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF EAST 149TH STREET WITH THE WESTERLY LINE OF RIVER AVENUE (75 FEET WIDE) AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

- A) ALONG SAID WESTERLY LINE OF RIVER AVENUE, NORTH 12 DEGREES - 36 MINUTES - 25 SECONDS WEST, A DISTANCE OF 1,446.00 FEET TO A POINT, THENCE;
- B) CONTINUING ALONG SAID WESTERLY LINE OF RIVER AVENUE NORTH 4 DEGREES - 56 MINUTES - 47 SECONDS WEST, A DISTANCE OF 12.23 FEET TO A POINT FORMED BY THE INTERSECTION OF THE WESTERLY LINE OF RIVER AVENUE WITH THE SOUTHWESTERLY LINE OF METRO NORTH/MTA LINE, THENCE;
- C) ALONG SAID SOUTHWESTERLY LINE OF METRO NORTH/MTA NORTH 58 DEGREES - 17 MINUTES - 19 SECONDS WEST, A DISTANCE OF 476.92 FEET TO A POINT, THENCE;
- D) NORTH 58 DEGREES - 32 MINUTES - 38 SECONDS WEST, A DISTANCE OF 128.70 FEET TO THE POINT AND PLACE OF BEGINNING, AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

1. ALONG THE NORTHERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "A", ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 926.46 FEET, A CENTRAL ANGLE OF 12 DEGREES - 03 MINUTES - 18 SECONDS, AN ARC LENGTH OF 194.93 FEET, BEARING A CHORD OF SOUTH 63 DEGREES - 26 MINUTES - 56 SECONDS WEST, A CHORD DISTANCE OF 194.57 FEET TO A POINT, THENCE;
2. CONTINUING ALONG THE NORTHERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "A", SOUTH 57 DEGREES - 25 MINUTES - 17 SECONDS WEST, A DISTANCE OF 98.50 FEET TO A POINT FORMED BY THE INTERSECTION OF SAID NORTHERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "A" WITH THE EASTERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "D", THENCE; THE FOLLOWING THREE (3) COURSES ALONG SAID EASTERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "D":
3. ALONG SAID EASTERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "D", NORTH 32 DEGREES - 34 MINUTES - 43 SECONDS WEST, A DISTANCE OF 159.50 FEET TO A POINT OF NON TANGENT CURVATURE, THENCE;
4. ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 868.54 FEET, A CENTRAL ANGLE OF 05 DEGREES - 21 MINUTES - 23 SECONDS, AN ARC LENGTH OF 81.20 FEET, BEARING A CHORD OF NORTH 16 DEGREES - 39 MINUTES - 30 SECONDS WEST, A CHORD DISTANCE OF 81.17 FEET TO A POINT OF TANGENCY, THENCE;
5. NORTH 13 DEGREES - 58 MINUTES - 56 SECONDS WEST, A DISTANCE OF 68.76 FEET TO A POINT ON THE LINE DIVIDING TENTATIVE LOT 65 AND TENTATIVE LOT 70, BLOCK 2357, THENCE;
6. ALONG SAID DIVIDING LINE BETWEEN TENTATIVE LOT 65 AND TENTATIVE LOT 70, BLOCK 2357, NORTH 57 DEGREES - 17 MINUTES - 56 SECONDS EAST, A DISTANCE OF 90.34 FEET TO A POINT ON THE AFOREMENTIONED SOUTHWESTERLY LINE OF METRO NORTH/MTA, THENCE;
7. ALONG SAID SOUTHWESTERLY LINE OF METRO NORTH/MTA, SOUTH 58 DEGREES - 32 MINUTES - 38 SECONDS EAST, A DISTANCE 359.65 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 61,303 SQUARE FEET OR 1.407 ACRES

**HOTEL PARCEL A2
(PART OF LOT 32, BLOCK 2539)**

BEGINNING AT A POINT ON THE EASTERLY LINE OF GATEWAY CENTER BOULEVARD (F.K.A. MAJOR WILLIAM DEEGAN BOULEVARD), SAID POINT BEING DISTANT THE FOLLOWING SIX (6) COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF EAST 149TH STREET WITH THE WESTERLY LINE OF RIVER AVENUE:

- A) ALONG SAID NORTHERLY LINE OF EAST 149TH STREET, NORTH 89 DEGREES - 49 MINUTES - 56 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT FORMED BY THE INTERSECTION OF THE AFOREMENTIONED NORTHERLY LINE OF EAST 149TH STREET WITH THE EASTERLY LINE OF GATEWAY CENTER BOULEVARD, THENCE;
- B) ALONG SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD, NORTH 42 DEGREES - 10 MINUTES - 54 SECONDS WEST, A DISTANCE OF 285.61 FEET TO A POINT FORMED BY THE INTERSECTION OF SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD, WITH THE SOUTHERLY LINE OF EAST 150TH STREET, THENCE;

- C) ALONG A LINE RUNNING THROUGH THE BED OF EAST 150TH STREET, NORTH 42 DEGREES - 29 MINUTES - 19 SECONDS WEST, A DISTANCE OF 59.77 FEET TO A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF CROMWELL AVENUE (60 FEET WIDE) WITH THE NORTHERLY LINE OF EAST 150TH STREET, THENCE;
- D) ALONG A LINE RUNNING THROUGH THE BED OF CROMWELL AVENUE, NORTH 49 DEGREES - 24 MINUTES - 42 SECONDS WEST, A DISTANCE OF 100.15 FEET TO A POINT FORMED BY THE EASTERLY LINE OF GATEWAY CENTER BOULEVARD WITH THE WESTERLY LINE OF CROMWELL AVENUE, THENCE;
- E) ALONG THE AFOREMENTIONED EASTERLY LINE OF GATEWAY CENTER BOULEVARD, NORTH 32 DEGREES - 31 MINUTES - 30 SECONDS WEST, A DISTANCE 1041.09 FEET TO A POINT IN THE SAME, THENCE;
- F) CONTINUING ALONG THE AFOREMENTIONED EASTERLY LINE OF GATEWAY CENTER BOULEVARD, NORTH 32 DEGREES - 48 MINUTES - 20 SECONDS WEST, A DISTANCE OF 389.14 FEET TO THE POINT AND PLACE OF BEGINNING, AND FROM SAID POINT OF BEGINNING RUNNING, THENCE; ALONG SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD, THE FOLLOWING FOUR (4) COURSES:
1. NORTH 32 DEGREES - 48 MINUTES - 20 SECONDS WEST, A DISTANCE OF 108.38 FEET TO A POINT, THENCE;
 2. SOUTH 57 DEGREES - 17 MINUTES - 56 SECONDS WEST, A DISTANCE OF 14.82 FEET TO A POINT, THENCE;
 3. NORTH 32 DEGREES - 48 MINUTES - 44 SECONDS WEST, A DISTANCE OF 162.66 FEET TO A POINT OF CURVATURE, THENCE;
 4. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 189.11 FEET, A CENTRAL ANGLE OF 26 DEGREES - 29 MINUTES - 10 SECONDS, AN ARC LENGTH OF 87.42 FEET, BEARING A CHORD OF NORTH 19 DEGREES - 34 MINUTES - 09 SECONDS WEST, A CHORD DISTANCE OF 86.64 FEET TO A POINT FORMED BY THE INTERSECTION OF SAID EASTERLY LINE OF GATEWAY CENTER BOULEVARD WITH THE DIVIDING LINE BETWEEN TENTATIVE LOT 65 AND TENTATIVE LOT 70 EXTENDED, BLOCK 2537, THENCE;
 5. ALONG SAID DIVIDING LINE BETWEEN TENTATIVE LOT 65 AND TENTATIVE LOT 70 EXTENDED, NORTH 57 DEGREES - 17 MINUTES - 56 SECONDS EAST, A DISTANCE OF 57.62 FEET TO A POINT ON THE WESTERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "D", THENCE; ALONG SAID WESTERLY LINE OF MAJOR DEEGAN EXPRESSWAY RAMP "D", THE FOLLOWING FOUR (4) COURSES:
 6. SOUTH 13 DEGREES - 58 MINUTES - 56 SECONDS EAST, A DISTANCE OF 55.91 FEET TO A POINT OF CURVATURE, THENCE;
 7. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 906.46 FEET, A CENTRAL ANGLE OF 04 DEGREES - 41 MINUTES - 21 SECONDS, AN ARC LENGTH OF 74.19 FEET, BEARING A CHORD OF SOUTH 16 DEGREES - 19 MINUTES - 37 SECONDS EAST AND A CHORD DISTANCE OF 74.16 FEET TO A POINT, THENCE;
 8. SOUTH 57 DEGREES - 10 MINUTES - 36 SECONDS WEST, A DISTANCE OF 5.71 FEET TO A POINT, THENCE;
 9. SOUTH 32 DEGREES - 49 MINUTES - 25 SECONDS EAST, A DISTANCE OF 231.34 FEET TO A POINT, THENCE;

10. ALONG A LINE THROUGH THE INTERIOR OF LOT 32, BLOCK 2539, SOUTH 57 DEGREES - 25 MINUTES - 17 SECONDS WEST, A DISTANCE OF 17.91 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 12,477 SQUARE FEET OR 0.286 ACRES

HOTEL PARCELS A1 & A2 CONTAIN A NET AREA OF 73,780 S.F. OR 1.693 ACRES

THESE DESCRIPTIONS ARE SUBJECT TO AERIAL EASEMENTS FOR THE WESTERLY AND EASTERLY OVERHANG OF THE ELEVATED PORTION OF THE MAJOR DEEGAN EXPRESSWAY PER PLANS ON FILE IN THE CITY OF NEW YORK OFFICE OF THE PRESIDENT, BOROUGH OF BRONX TOPOGRAPHICAL DIVISION.

THESE DESCRIPTIONS ARE SUBJECT TO ADDITIONAL EASEMENTS, COVENANTS AND RESTRICTIONS PER TITLE REPORTS PREPARED BY ROYAL ABSTRACT OF NEW YORK, LLC, AGENTS FOR CHICAGO TITLE INSURANCE COMPANY, TITLE NO. 819830 (3203-10300367) AND COMMONWEALTH LAND TITLE INSURANCE COMPANY, TITLE NO. 819830 (L459257), WITH AN EFFECTIVE DATE OF DECEMBER 1, 2003.

THESE DESCRIPTIONS ARE PREPARED WITH REFERENCE TO A MAP ENTITLED, "ALTA/ACSM LAND TITLE SURVEY, THE RELATED COMPANIES, LOT 20, BLOCK 2356, LOT 32 & PART OF LOT 60, BLOCK 2539 AND LOTS 1 & 86, BLOCK 2357, AND PORTIONS OF CROMWELL AVENUE, E. 151st STREET, A.K.A. TENTATIVE LOTS 20 & 25, BLOCK 2356 AND TENTATIVE LOTS 35, 40, 42, 45 & 65, BLOCK 2357 BOROUGH & COUNTY OF BRONX, CITY & STATE OF NEW YORK", PREPARED BY CONTROL POINT ASSOCIATES, INC. DATED JULY 6, 2006, LAST REVISED AUGUST 3, 2006 AS REVISION NUMBER 1.

TOGETHER WITH THE BENEFITS OF THAT CERTAIN EASEMENT FOR INGRESS, EGRESS AND REGRESS AS CONTAINED IN MAP NO. 3, PARCEL NO. 4 AND 5 AND REFERENCED IN THAT CERTAIN NOTICE OF APPROPRIATION FILED BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION, RECORDED IN REEL 253, PAGE 1919.

Exhibit C

EXISTING LEASES

Tenant Name	Square Footage ¹	Lease Term with Renewal Options
BJ's Wholesale Club, Inc.	133,438	Twenty (20) years with four (4) consecutive five (5) year renewal options
Bed, Bath and Beyond Inc.	33,877	Fifteen (15) years with three (3) consecutive five (5) year renewal options
Best Buy Stores, L.P.	52,086	Ten (10) years with three (3) consecutive five (5) year renewal options
Gateway Apple, LLC	6,500	Twenty (20) years with two (2) consecutive five (5) year renewal options
Home Depot U.S.A., Inc. d/b/a The Home Depot	124,955	Twenty-five (25) years with four (4) consecutive five (5) year renewal options
HSBC Bank USA, National Association	4,580	Ten (10) years with two (2) consecutive five (5) year renewal options
Marshall's of MA, Inc.	37,497	Ten (10) years with three (3) consecutive five (5) year renewal options
Target Corporation	155,375	Twenty-five (25) years with the option to renew for consecutive periods of five (5) years and one period for less than five (5) years until the ground lease expires
Staples The Office Superstore East, Inc.	15,490	Fifteen (15) years with three (3) consecutive five (5) year renewal options

¹ All square footage figures are approximations and subject to change pursuant to the Existing Leases.

**PROJECT COMPLETION CERTIFICATE OF COMPANY AS
REQUIRED BY SECTION 2.2(d) OF THE INSTALLMENT SALE AGREEMENT
AND ASSIGNMENT OF LEASE**

The undersigned, an Authorized Representative (as defined in the Installment Sale Agreement referred to below) of BTM Development Partners, LLC, a New York limited liability company (the "Company"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Installment Sale Agreement and Assignment of Lease, dated as of September 14, 2006 (the "Installment Sale Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Company, 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 Company in good faith, all labor, service, machinery, equipment, materials and supplies used therefor have been paid for;

(iii) all property constituting the Facilities is subject to the Installment Sale Agreement, subject only to Permitted Encumbrances;

(iv) in accordance with all applicable laws, regulations, ordinances and guidelines, the Facilities are ready for occupancy, use and operation for their intended purposes;

(v) the aggregate square footage developed by the Company at the Approved Facilities is _____;

(vi) this Certificate is given without prejudice to any rights of the Company 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;

(vii) attached hereto are temporary certificate(s) of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facilities for the purposes contemplated by the Installment Sale Agreement.

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

BTM DEVELOPMENT PARTNERS, LLC,
a New York limited liability company

By _____

Name:

Title:

EMPLOYMENT and BENEFITS REPORT
For the Fiscal Year July 1, - June 30, (FY ')

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than the next August 1, .

PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

- 1. Number of permanent Full-Time Employees as of June 30, 20__
2. Number of non-permanent Full-Time Employees as of June 30, 20__
3. Number of permanent Part-Time Employees as of June 30, 20__
4. Number of non-permanent Part-Time Employees as of June 30, 20__
5. Number of Contract Employees as of June 30, 20__
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 2006.

- 7. Number of employees included in item 6 above who reside in the City of New York.
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Y N (please circle Y or N)
Do the Company and its Affiliates offer health benefits to all Part-Time Employees? Y N (please circle Y or N)

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

- 9. Number of employees in Item 6 who are "Exempt"
10. Number of employees in Item 6 who are "Non-Exempt"
11. Number of employees in item 10 that earn up to \$25,000 annually.
12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually.
13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually.

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY' :

- 14. Value of sales and use tax exemption benefits \$
15. Value of Commercial Expansion Program ("CEP") benefits \$
16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$
17. Were physical improvements made to any Project Location during FY ' at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Y N (please circle Y or N)

If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s).. #

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: _____

Signature By: _____ Date: _____

Name (print): _____ Title: _____

DEFINITIONS:

“**Affiliate**” is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

“**Company**” includes any entity that is a party to a Project Agreement.

“**Contract Employee**” is a person who is an independent contractor (i.e., a person who is not an “employee”), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

“**Financial Assistance**” is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) program or New York City Public Utility Service (NYCPUS) program.

“**Full-Time Employee**” is an employee who works at least 35 hours per week at a Project Location.

“**Part-Time Employee**” is an employee who works less than 35 hours per week at a Project Location.

“**Project Agreement**” is any agreement or instrument pursuant to which an entity received or receives Financial Assistance.

“**Project Location**” is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

“**Tenant**” is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

ITEM INSTRUCTIONS For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA’s request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms.

1-4. Items 1, 2, 3 and 4 must be determined as of **June 30, 20__** and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**

5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. **Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.**

9. Indicate the number of employees included in item 6 who are classified as “**Exempt**”, as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

10. Indicate the number of employees included in item 6 who are classified as “**Non-Exempt**”, as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. **Do not include any sales and use tax savings realized under the NYS Empire Zone Program.**

15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.



New York City
Industrial Development Agency

IDA SUBTENANT SURVEY

DUE DATE: January 4, ____

<<COMPANY>>
<<ADDRESS>>
<<CITY>>
<<NAME>>

In order to verify compliance with your IDA Transaction Documents, please complete the information requested below for each and every subtenant occupying space in your Facilities as of **DECEMBER 31, ____**.

Total Square Footage of Building(s): _____ Sq. Ft.

Subtenant	Square Footage	Beginning Date	End Date	Related Company Yes/No
------------------	-----------------------	-----------------------	-----------------	-------------------------------

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: _____

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

Help Line: 212-312-3963

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



**LOCATION & CONTACT
INFORMATION**

Due Date By Facsimile: July 31, 20xx
BTM Development Partners, LLC

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits from the New York City Industrial Development Agency ("IDA").

Project Address & Floor Borough Zip Code Type of Benefit (Pilot, Sales Tax, etc.)

* Please use additional pages if necessary *

Please provide below current Project Contact Information:

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ Email: _____
(Please print CLEARLY)

Signature: _____

Backup Contact Name/Title/Phone Number:

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:
NYC IDA
Attention: Compliance Dept.
110 William Street, 4th Floor
New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963

SCHEDULE E

CERTIFICATE AS TO PROHIBITED PERSONS FROM COMPANY

The undersigned, an Authorized Representative of BTM Development Partners, LLC, a New York limited liability company (the "Company"), DOES HEREBY CERTIFY to the New York City Industrial Development Agency (the "Agency"), pursuant to Section 6.14 of the Installment Sale Agreement and Assignment of Lease, dated as of September 14, 2006 (the "Installment Sale Agreement"), between the Agency and the Company that:

1. The Company is not a Prohibited Person.
2. The Company does not Control a Prohibited Person.
3. None of the Principals of the Company or any entity or Person which Controls the Company or the Principals of the Company is a Prohibited Person.
4. None of the members or the Principals of any members of the Company is a Prohibited Person.
5. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Installment Sale Agreement.

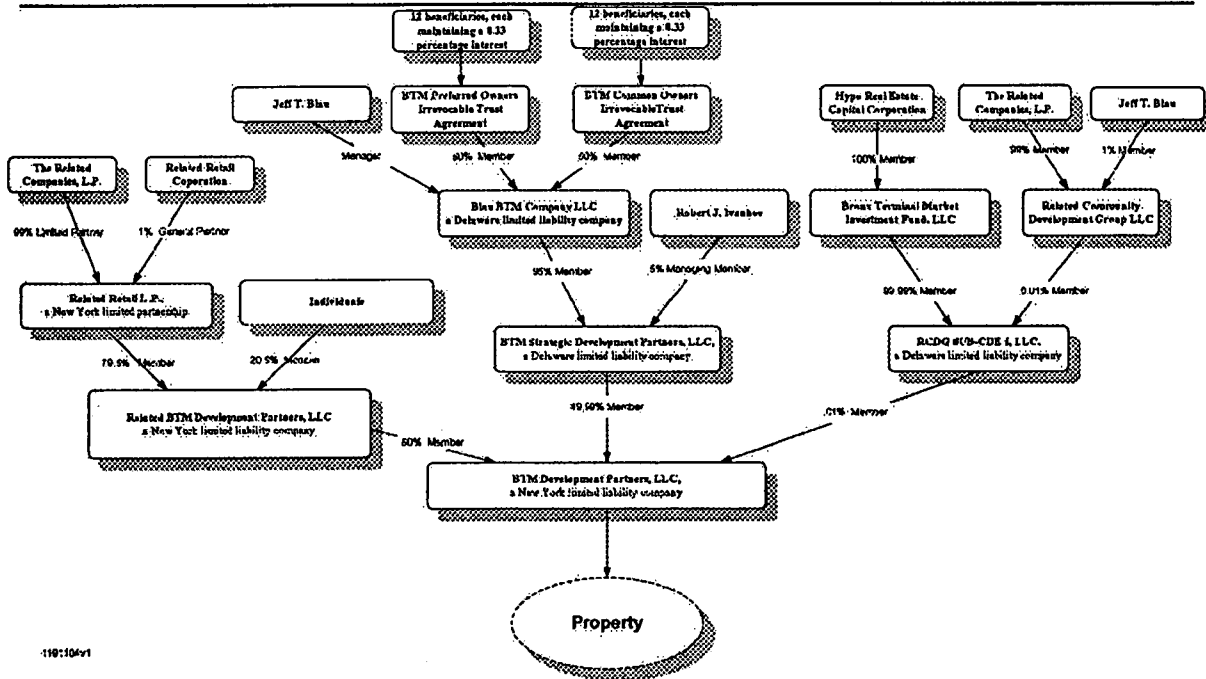
IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

BTM DEVELOPMENT PARTNERS, LLC,
a New York limited liability company

By _____
Name:
Title:

SCHEDULE F
ORGANIZATION CHART

**BRONX TERMINAL MARKET
ORGANIZATIONAL CHART**



198104v1

SCHEDULE G-1

EMPLOYEE OWNERS

Employee Owner Name	Relative Percentage of indirect Beneficial Interest in the Company
Glenn Goldstein	3.5%
Robert Ursini	2%
Andrew Pattap	1%
Jeff Blau	3.75%

CERTIFICATE AS TO EMPLOYEE OWNERS FROM COMPANY

The undersigned, an Authorized Representative of BTM Development Partners, LLC, a New York limited liability company (the "Company"), DOES HEREBY CERTIFY to the New York City Industrial Development Agency (the "Agency"), pursuant to Section 6.19 of the Installment Sale Agreement and Assignment of Lease, dated as of September 14, 2006 (the "Installment Sale Agreement"), between the Agency and the Company, that attached hereto is a true and correct list of all Employee Owners and their percentage of beneficial ownership in the Company.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

BTM DEVELOPMENT PARTNERS, LLC,
a New York limited liability company

By _____

Name:

Title: