
**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

and

BANK OF AMERICA, N.A.

and

BANK OF AMERICA CORPORATION

LEASE AGREEMENT

Dated as of November 1, 2004

Bank of America Project

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
File No. 90570.178

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement"), made and entered into as of November 1, 2004, by and among **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, party of the first part (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, **BANK OF AMERICA, N.A.**, a national banking association organized and existing under and by virtue of the laws of the United States, and **BANK OF AMERICA CORPORATION**, a corporation organized and existing under and by virtue of the laws of the State of Delaware, each having offices at 525 North Tryon Street, 3rd Floor, Charlotte, North Carolina 28255 (collectively, the "Company") (all capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Project Agreement, dated as of the date hereof between the parties hereto (the "Project Agreement")):

WITNESSETH:

WHEREAS, the Agency was established by the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended and Chapter 1082 of the Laws of 1974 of the State of New York, as amended (the "Act") for the benefit of The City of New York and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company and/or Eligible Affiliates to undertake leasehold improvements with respect to and to acquire and install certain building materials, constituting Facility Improvements Materials in those certain premises leased by the Company and described in Appendix A hereto constituting the Project Premises (Facility Improvements), all for use by the Company and/or Eligible Affiliates in the Company Business; and

WHEREAS, in connection with the improvement of the Project Premises (Facility Improvements), the Agency intends to grant the Company financial assistance in the form of New York State and Local Sales and Use Tax exemptions as and to the extent provided in the Project Documents; and

WHEREAS, Agency financial assistance and related Agency benefits are necessary to provide employment in, and are beneficial for the economy of, The City of New York and are reasonably necessary to induce the Company to proceed with the Project; and

WHEREAS, as part of the financial assistance to be given to the Company and Eligible Affiliates, the Agency has issued its Sales Tax Letter to be utilized by the Company in connection with the Facility Improvement Project; and

WHEREAS, the Company desires to commence with the improvement and renovation of the Project Premises (Facility Improvements); and

WHEREAS, the Company has a valid leasehold interest in the Project Premises (Facility Improvements); and

WHEREAS, in order to permit the Company to claim New York State and Local Sales and Use Tax exemptions under the Sales Tax Letter with respect to leasehold improvements undertaken at the Project Premises (Facility Improvements) and the purchase of Facility Improvement Materials which are to be incorporated into the Project Premises (Facility Improvements), the Company has leased and/or subleased the Project Premises (Facility Improvements) to the Agency in accordance with the Act and the Prime Lease and pursuant to the terms of the Company Lease; and

WHEREAS, the Agency now wishes to sublease the Project Premises (Facility Improvements) to the Company on the terms and conditions set forth in this Agreement;

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

ARTICLE I

Definitions And Representations

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

Company shall mean collectively Bank of America, N.A., a national banking association organized and existing under the laws of the United States, and Bank of America Corporation, a corporation organized and existing under the laws of the State of Delaware, their respective permitted successors and assigns pursuant to Section 4.1 of the Project Agreement (including any surviving, resulting or transferee corporation or other legal entity as provided in such Section 4.1) and each Eligible Affiliate designated from time to time by the Company.

Landlord shall mean:

(i) with respect to the 100 West 33rd Street premises, Builtland Partners (c/o Milstein Properties Corp), and its successors and assigns under the Prime Lease (100 West 33rd Street);

(ii) with respect to the 335 Madison Avenue premises, Builtland Partners (c/o Milstein Properties Corp), and its successors and assigns under the Prime Lease (335 Madison Avenue); and

(iii) with respect to the One Bryant Park premises, One Bryant Park LLC, and its successors and assigns under the Prime Lease (One Bryant Park).

Legal Requirements shall mean the Constitutions of the United States and of the State of New York all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements (including but not limited to zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen,

ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Company, (ii) the Project Premises (Facility Improvements) or any part thereof, or (iii) any use or condition of the Project Premises (Facility Improvements) or any part thereof.

Permitted Encumbrances shall mean, as of any particular time:

- (i) the Ground Lease, the Prime Lease, the Company Lease and this Agreement;
- (ii) liens for real estate taxes, payments in lieu of taxes, assessments, levies and other governmental charges and impositions, and any liens for water and sewer rents and taxes, each to the extent not yet due and payable;
- (iii) utility access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not interfere with or impair the use of the Project Premises (Facility Improvements) as contemplated by the parties hereto;
- (iv) 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 Project Premises (Facility Improvements) and as do not, either singly or in the aggregate, materially impair the use of the property affected thereby for the purpose for which it was acquired and held by the Company under this Agreement;
- (v) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (vi) all title exceptions to which the Project Premises (Facility Improvements) are subject;
- (vii) any mechanic's lien imposed on the Project Premises (Facility Improvements) which arises from work performed for the Landlord or for any tenant other than the Company, or any judgment lien imposed on the Project Premises (Facility Improvements) which arises from a judgment against the Landlord or against any tenant of the Project Premises (Facility Improvements) other than the Company, or any lien of any nature whatsoever which is imposed on the Project Premises (Facility Improvements) and which is not the responsibility of the Company to remove, bond or dispose of;
- (viii) with respect to each of the Project Premises (Facility Improvements) leased by the Company, any and all encumbrances to which the applicable Prime Lease or the Ground Lease is or hereafter shall be subordinate; and
- (ix) any liens or encumbrances existing with respect to the One Bryant Park Project Premises (Facility Improvements) created with respect to the Agency's \$650,000,000 Liberty Revenue Bonds, Series 2004 (One Bryant Park LLC Project).

Permitted Users shall include any vendors or concession operators supplying services for Principal Use by the Company.

Prime Lease shall collectively mean:

(i) with respect to the 100 West 33rd Street premises, that certain Agreement of Lease, dated December 28, 2001, between the Landlord (100 West 33rd Street) and Bank of America, N.A., as amended;

(ii) with respect to the 335 Madison Avenue premises, that certain Agreement of Lease, dated July 28, 1981, and the certain Agreement of Lease, dated February 27, 1996, both between the Landlord (335 Madison Avenue) and Bank of America, N.A., as amended; and

(iii) with respect to the One Bryant Park premises, that certain Agreement of Lease, dated December 19, 2003, between the Landlord (One Bryant Park) and Bank of America, N.A., as amended.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

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

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

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

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

Section 1.3 Representations and Warranties by Agency. The representations and warranties of the Agency set forth in Section 2.2 of the Project Agreement are incorporated by reference in this Agreement, with the same force and effect as if each and every provisions thereof were set forth at length herein.

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 to the Agency, hereby finds and determines that the subleasing of the Project Premises (Facility Improvements) by the Agency to the Company pursuant to the terms hereof, in order to enable the Company to obtain exemptions from New York State and Local Sales and Use Tax Exemptions under the Sales Tax Letter for the undertaking of leasehold improvements to and the purchase of Facility Improvement Materials with respect to the Project Premises (Facility Improvements) is reasonably necessary to induce the Company to proceed with the Project.

Section 1.5 Representations and Warranties by the Company. The representations and warranties of the Company set forth in Section 2.1 of the Project Agreement are incorporated by reference in this Agreement, with the same force and effect as if each and every provisions thereof were set forth at length herein.

In addition to the foregoing, the Company makes the following representations and warranties as of the date hereof:

(i) The assistance provided by the Agency to the Company pursuant to the terms of the Project Documents are reasonably necessary to induce the Company to proceed with the Project which Project was induced on February 10, 2003.

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

(iii) No portion of the Project Premises (Facility Improvements) is or will be primarily used in making retail sales to customers who personally visit the Project Premises (Facility Improvements) unless such use will not result in a violation of the Agency Requirements (and no sales or use tax exemption has been or will be made available therefor under the Sales Tax Letter). For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

(iv) The Company was considering relocating and expanding certain of its operations to locations outside of the City, with the resultant loss of employment in the City; and the availability of Agency financing assistance and related Agency benefits for the Project was critical in narrowing the cost gap between remaining and expanding in the City and relocating outside of the City, thereby making it possible for the Company to decide to retain and increase its employees and related operations within the City and to proceed with the Project.

(v) The Prime Leases are in full force and effect and the Company has no knowledge of any material breach or default thereunder by the Company, which, if uncured, might cause an Event of Default (as defined in the respective Prime Lease) under such Prime Lease.

(vi) To the best knowledge of the Company, there is no existing violation against the Project Premises (Facility Improvements) filed by any court or administrative agency that may prohibit the use or operation of the Project Premises (Facility Improvements) for its intended purposes which the Company has not agreed to remove or made arrangements to have removed and satisfied of record.

(vii) Except as otherwise provided in the Project documents, no Person other than the Company and/or the Eligible Affiliates and/or Permitted Users will be in occupancy or possession of any portion of the Project Premises (Facility Improvements).

(viii) Each representation or warranty made by or on behalf of the Company in the application and related materials submitted to the Agency for approval of the Project or by the Company in this Agreement and in each other Project Document to which the Company is a party, is true, correct and complete in all material respects as of the date made. Each representation or warranty made by the Company in any report, certificate, financial statement, summary of financial statements or other instrument furnished pursuant to this Agreement and any other Project Document shall be true, correct and complete in all material respects as of the date made.

(ix) The design of the Facility Improvement Project and the operation of the Project Property (Facility Improvements) will comply in all material respects with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

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

(xi) The execution, delivery and performance of this Agreement and of the Company Lease Agreement by the Company does not constitute a breach, default or violation of the terms of any of the Prime Leases by the Company, except that the execution and delivery of this Agreement and the Company Lease Agreement require the consent of the Landlord (100 West 33rd) and the Landlord (335 Madison) which consents have not been obtained prior to the date hereof.

(xii) To the best knowledge of the Company, neither the Company nor any Eligible Affiliate thereof is a Prohibited Person.

(xiii) The total rentable square footage of the 100 West 33rd Street Project Premises (Facility Improvements) is 181,223.

(xiv) The total rentable square footage of the 333 Madison Avenue Project Premises (Facility Improvements) is 206,287.

(xv) As of the date hereof the total rentable square footage of the One Bryant Park Project Premises (Facility Improvements) is anticipated to be approximately 1,100,000.

ARTICLE II The Project

Section 2.1 The Project. (a) The Company and/or Eligible Affiliates will, on behalf of the Agency, and from time to time and in the ordinary course of its business, proceed with the making of Facility Improvements to the Project Premises (Facility Improvements), all to be effected in accordance with this Agreement, the Project Agreement and the Sales Tax Letter. All contractors, materialmen, vendors, suppliers and other Persons furnishing labor, services or materials for or in connection with the Facility Improvements shall be selected by the Company or a representative thereof in the name of the Agency.

(b) The Company shall be responsible for the payment of (i) all of the costs and expenses in connection with the preparation of the Sales Tax Letter, the Company Lease and this Agreement and the other Project Documents, (ii) as between the Agency and the Company, all taxes and charges, if any, payable in connection with the leasehold conveyance effected pursuant to the Company Lease or attributable to periods prior to the term of the Company Lease, and this Agreement, and (iii) all shipping and delivery charges and all other reasonable expenses or claims incurred by or on behalf of the Company in connection with the Facility Improvements.

(c) At the request of the Agency to the Company, the Company shall provide such additional information and clarifications concerning any portion of the Facility Improvements effected hereunder by the Company as shall be reasonably requested by the Agency.

(d) With respect to each of the Project Premises (Facility Improvements), the Company will obtain or cause to be obtained all necessary approvals, permits, authorizations and licenses (to the extent that the Landlord, with respect to such Project Premises (Facility Improvements), does not have exclusive standing to obtain same or to cause same to be obtained) from any and all governmental agencies and appropriate authorities requisite to the effectuation by the Company of the Facility Improvements and the operation and use of the Project Premises (Facility Improvements) and shall furnish copies of the same to the Agency promptly upon receipt thereof, all of which will be done in compliance in all material respects with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance required to be maintained hereunder with respect to the Project Premises (Facility Improvements).

(e) The Company shall take such action and institute such proceedings, and enforce such warranties, as shall be reasonably necessary to cause all contractors and material suppliers to complete their contracts in accordance with the terms of said contracts (subject to the independent right of the Company, in the exercise of its good faith business judgment, to waive or modify performance in whole or in part by any such contractor or supplier). The Agency will cooperate in any such action or proceeding, at the Company's sole cost and expense, provided that the Agency shall not be required to take any action it does not deem to be reasonable. Any amounts recovered by way of damages, credits, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, shall be paid to the Company.

(f) Title to (or a leasehold or licensee's interest in) all materials and other property intended to be incorporated or installed as Facility Improvements and as part of the Project Premises (Facility Improvements) shall vest in the Agency upon the date set forth in the applicable purchase documents. The Company shall take all action reasonably necessary to protect such title of the Agency in the Facility Improvements against claims of any third parties.

Section 2.2 Commitment to Project. The Company will, from time to time and in the ordinary course of its business, proceed with the making of Facility Improvements at the Project Premises (Facility Improvements), and such work will be effected in a first-class workmanlike manner, all on behalf of and as agent for the Agency, and all in accordance with the Sales Tax Letter, this Agreement, the Equipment Lease Agreement and the Project Agreement. The Company shall not be entitled to any reimbursement for the Facility Improvements from the Agency nor shall the Company be entitled to any diminution of the payments to be made under this Agreement or any other Project Document.

Section 2.3 No Title Assurance by Agency. The Agency makes no representation or warranty that the Agency has been vested with a valid leasehold or subleasehold interest in the Project Premises (Facility Improvements) for purposes of this Agreement or any other Project Document, nor shall the Agency have any liability (pecuniary or otherwise) by reason of any such failure of interest.

ARTICLE III

Lease of Project Premises (Facility Improvements)

Section 3.1 Lease of Project Premises (Facility Improvements). The Agency hereby leases to the Company and the Company hereby leases from the Agency the Project Premises (Facility Improvements), all for and during the term herein provided and upon and subject to the terms and conditions herein set forth subject however, without modifying the obligations of the Company hereunder, to the terms, conditions and limitations set forth in the Prime Lease. The Company shall, subject to the provisions of this Agreement, at all times during the term of this Agreement use and operate the Project Premises (Facility Improvements) as a qualified "project" in accordance with the provisions of the Act and for the operation of the Company Business as specified in the recitals to this Agreement. The Company shall not use or operate the Project Premises (Facility Improvements) or allow the Project Premises (Facility Improvements) or any part thereof to be used or operated for any unlawful purpose or in a manner which may constitute a nuisance, public or private, or make void or voidable any insurance required hereunder then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Lease Commencement Date and shall expire on the earliest of (i) the twentieth anniversary of the Rent Commencement Date under the Prime Lease (One Bryant Park), (ii) June 30, 2029, or (iii) such earlier date as this Agreement may be terminated as hereinafter provided.

Section 3.3 Rental Provisions. (a) Base Rent. The Company shall pay Base Rent to the Agency, without demand or notice on the Lease Commencement Date in the amount of \$10.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) Additional Rent. 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 Rent.

(c) Missed Payments. In the event the Company should fail to make or cause to be made any of the rental 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 Obligation of the Company Unconditional. The obligation of the Company to pay the amounts due pursuant to Sections 3.3, 7.2 and 8.1 hereof, the obligation of the Company to pay all other payments provided for in this Agreement and to maintain the Project Premises (Facility Improvements) in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person whatsoever. For so long as this Agreement remains in effect, the Company will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or assign any obligation of the Company under this Agreement, except as provided in this Agreement, or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

ARTICLE IV Maintenance, Taxes And Insurance

Section 4.1 Maintenance, Alterations and Facility Improvements. (a) During the term of this Agreement, the Company will keep or cause the applicable Landlord to keep in accordance with the applicable Prime Lease, each of the Project Premises (Facility Improvements) in good and safe operating order and condition, ordinary wear and tear excepted, and subject to Section 9.2(b) will occupy the Project Premises (Facility Improvements) in the manner for which they were designed and intended and will make or cause the applicable Landlord to make in accordance with the applicable Prime Lease all replacements, and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to permit the continuity of the operation of the Company Business by the Company and/or Eligible Affiliates at the Project Premises (Facility Improvements). All replacements and repairs effected by the Company shall be made and installed at the Project Property (Facility Improvements) in a good and workmanlike manner, and be made or installed in compliance with the requirements of all governmental bodies and the Company shall use reasonable efforts to cause all replacements and repairs by the applicable Landlord to be so performed. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Property (Facility

Improvements), to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Property (Facility Improvements), or to furnish any utilities or services for the Project Property (Facility Improvements) and the Company hereby agrees to assume full responsibility therefor. Provided there are Unrealized Sales Tax Savings, the Company shall be permitted to utilize the Sales Tax Letter to effect the replacement or renewal of any inadequate, obsolete, damaged, worn-out or unsuitable parts of the Project Property (Facility Improvements).

(b) The Company shall have the right to make such alterations of, replacements of, repairs to and/or additions to the Project Property (Facility Improvements) or any part thereof from time to time as it may determine to be desirable, provided that (i) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in material compliance with all applicable legal requirements, (ii) subject to subsection (d) of this Section 4.1, 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 Project Property (Facility Improvements) shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, and (iii) such additions or alterations do not change the nature of the Project Property (Facility Improvements) so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Project Property (Facility Improvements) shall constitute a part of the Project Property (Facility Improvements), subject to this Agreement and the Project Documents. Provided there are Unrealized Sales Tax Savings, the Company shall be permitted to utilize the Sales Tax Letter to effect the replacement or renewal of any inadequate, obsolete, damaged, worn-out or unsuitable parts of the Project Property (Facility Improvements).

(c) Subject to paragraph (d) below and Section 6.5 hereof, the Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Premises (Facility Improvements) or any part thereof, or the interest of the Company in the Project Premises (Facility Improvements), this Agreement or the Company Lease except for Permitted Encumbrances.

(d) The Company may, at its sole cost and expense, contest (with written notice thereof to be sent to the Agency promptly following commencement of such contest), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any payment to a contractor undertaking Facility Improvements at the Project Premises (Facility Improvements), if (1) neither the Project Premises (Facility Improvements) nor any material portion thereof, or any interest therein, would be in any danger of being sold, forfeited or lost, and (2) such contest shall not result in the Company, the Eligible Affiliates or the Agency being in any danger of any criminal liability.

(e) The Company shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed at the Project Premises (Facility Improvements) tenant improvement work and all furnishings and other personal property (the "Company Property") with respect to which no sales or use tax exemption shall have been received pursuant to the Sales Tax Letter or otherwise constituting the Project Property (Facility Improvements) or Facility Equipment without conveying title to or any leasehold interest in such property to the Agency nor subjecting such property to this Agreement.

The Agency shall not be responsible for any loss of or damage to the Company Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company Property.

Section 4.2 Reserved.

Section 4.3 Taxes, Assessments and Charges. (a) Subject to paragraph (b) below (and, if applicable, subject to the terms of the applicable Prime Lease), the Company shall pay or cause to be paid, when the same shall become due and payable, all taxes, assessments, governmental charges and impositions, general and specific, whether foreseen or unforeseen, ordinary or extraordinary, under any present or future law, which may be levied and assessed upon or against the estate or interest of the Agency or the Company in the Project Premises (Facility Improvements) or other amounts payable hereunder during the term of this Agreement.

(b) The Agency shall have no responsibility for the payment of any Imposition (as defined below). Notwithstanding any provision hereof to the contrary, the Company shall pay or cause to be paid, when the same shall become due and payable any and all Impositions to the extent that payment of such is an obligation of the Company under any Prime Lease.

For purposes of this Section 4.3 the term "Imposition" shall mean all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project Premises (Facility Improvements), and all water and sewer charges, special district charges, assessments, Business Improvement District charges and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project Property (Facility Improvements). The term Impositions shall not include (i) New York State and Local Sales and Use taxes to the extent exemptions from such taxes are claimed in accordance with the Sales Tax Letter and (ii) those types of real property taxes in substitution for which the Company or the Landlord shall be obligated to make payments in lieu of taxes under the Ground Lease or the Prime Lease.

(c) In addition, in the event the Project Premises (Facility Improvements) or any portion thereof is exempt from Impositions (other than Sales and Use Taxes, or real property taxes in substitution for which the Company or the Landlord shall be obligated to make payments in lieu of taxes as described above) solely due to the Agency's interest in the Project Premises (Facility Improvements), the Company shall (subject to paragraph (b) above,) promptly pay or cause to be paid all such Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Company or otherwise if the Agency had no such interest in the Project Premises (Facility Improvements).

(d) The Company may at its sole cost and expense and in good faith commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any Imposition (upon prior written notice to the Agency) provided, that, (i) if the Company withholds payment, such proceeding shall suspend the execution or enforcement of any Lien arising from the non-payment of such Imposition against the Project Premises (Facility

Improvements) or any part thereof or any interest therein or in this Agreement or the Company Lease of the Agency or against any of the rentals or other amounts payable under this Agreement or the Company Lease or the Project Agreement, (ii) neither the Project Premises (Facility Improvements) nor any material portion thereof or interest therein would be in any danger of being sold, forfeited or lost, and (iii) neither the Company nor the Agency would be in any danger of any criminal liability for failure to pay such Imposition.

(e) In addition, in the event the Project Premises (Facility Improvements) or any portion thereof would qualify for an exemption from Impositions but for the Agency's interest therein, the Agency shall reasonably cooperate with the Company at the sole cost and expense of the Company, in order to permit the Company to receive such exemption; provided, that, no such cooperation shall result in (i) an increase of the obligations of the Agency or reduce the rights of the Agency hereunder or (ii) a decrease of the obligations of the Company hereunder or increase of the rights or benefits of the Company under the Project Documents.

Section 4.4 Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of improvement, construction, reconstruction or renovation of the Project Premises (Facility Improvements), the Company shall maintain or cause to be maintained insurance with respect to each of the Project Premises (Facility Improvements), with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (g), inclusive, of this Section 4.4, include, without limitation (hereinafter, "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction of the Project Premises (Facility Improvements) and 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) General Liability insurance and/or Umbrella Liability insurance, including contractual liability coverage 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 Project Premises (Facility Improvements) and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Company (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, (3) under Section 6.2(a)(ix) hereof to the extent not available to the Company at commercially reasonable rates), and (B) 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 (C) any such insurance shall not contain any provisions for a deductible or retention amount in excess

of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company, but if the net worth of the Company shall be less than \$200,000,000 then such deductible shall not exceed \$50,000;

(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 contractor or subcontractor performing work with respect to the Project Premises (Facility Improvements); the Company shall require that all said contractors and subcontractors shall maintain all forms or types of insurance required by law with respect to their respective employees; and

(iv) Such other insurance in such amounts and against such insurable hazards as is customary for similar projects as the Agency may reasonably require provided such coverage is reasonably available at commercially reasonable premiums and are of the types and levels of coverage typically maintained by similar businesses and Facility Improvements in the City.

All Specific Coverage required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating of "A-/X" or better, or as otherwise approved by the Agency.

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

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

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

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

(iv) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding: (w) any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Company or any other Person; (x) the operation or use of the Project Premises (Facility Improvements) for purposes more hazardous than permitted by the terms of the policy;

(y) any foreclosure or other proceeding or notice of sale relating to the Project Premises (Facility Improvements); or (z) any change in the title to or ownership of all or any portion of the Project Premises (Facility Improvements);

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

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

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

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

(c) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project Premises (Facility Improvements) shall be paid to the Company and applied in accordance with Section 5.1 hereof.

(d) Concurrently with the execution of this Agreement, the Company shall deliver or cause to be delivered to the Agency a broker's certificate of coverage, certificate of liability insurance, evidence of property insurance and certificates or other evidence of other required insurance, and upon written request of the Agency, promptly thereafter, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.4. 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.

(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 4.4. The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 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 BUSINESS OR INTERESTS OF THE COMPANY OR ANY OTHER PERSONS.

(g) Notwithstanding any provision of this Agreement to the contrary, the Company's obligation to provide Specific Coverage with respect to the One Bryant Park Project Premises (Facility Improvements) shall commence upon the occupancy by the Company or any Eligible Affiliate of the One Bryant Park Project Premises (Facility Improvements).

(h) Notwithstanding the foregoing the Company may provide for Specific Coverage under Bank of America, N.A.'s ("BoA") insurance program, implemented by BoA for other properties occupied by BoA provided that BoA is rated higher than BBB- by Standard & Poor's Rating Services (or such equivalent rating by Moody's Investors Services, Inc. or Fitch Inc.). In the event Company shall so provide for the Specific Coverage under BoA's insurance program, deductibles or self-insurance retention for the insurance required pursuant to Section 4.4(a)(i) and (ii) up to an amount of \$2,000,000 shall be deemed acceptable to the Agency; provided, that the Company shall, within thirty (30) days prior to the effective date of such policy issued pursuant to this Section 4.4(h), deliver to the Agency a written notice of the Company's election to insure pursuant to this Section 4.4(h) and an indemnity agreement by BoA in favor of the Agency, in form and substance reasonably satisfactory to the Agency, indemnifying the Agency for claims that would otherwise have been covered by insurance policies required to be obtained pursuant to this Section 4.4(h) had the deductible limits set forth above been commercially reasonable deductibles reasonably approved by the Agency.

Section 4.5 Advances by Agency. In the event that the Company fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first providing the Company with ten (10) days prior written notice (except in the event of an emergency condition which in the reasonable judgment of the Agency necessitates immediate action) of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement 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 additional obligations of the Company to the Agency, which amounts, together with interest thereon at the rate of eighteen per cent (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 amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.6 Compliance with Law. (a) The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, and subject to the provisions of Section 4.6(b) below, use and operate the Project Premises (Facility Improvements) in compliance (or promptly use good faith diligent efforts to cause all of their subtenants, users and operators to use and operate the Project Premises (Facility Improvements) in compliance with all Legal Requirements. Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Landlord with any Legal Requirement: (i) if the Landlord is required, under the terms of the Prime Lease to comply with such Legal Requirements, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (ii) if such non-compliance is the result of any action or failure to act on the part of the Landlord (which action or failure to act is not a breach of any obligation of the Landlord to the Company under the

Prime Lease) or of any tenant or occupant (other than the Company or any Eligible Affiliate thereof or a tenant, directly or indirectly, of the Company or any Eligible Affiliate thereof) in any portion of the Project Premises or of any agent, contractor, officer, director, employee or servant of the Landlord or of any such tenant.

(b) The Company may contest in good faith the validity, existence or applicability of any Legal Requirement if (i) such contest shall not result in the Project Premises (Facility Improvements) or any material 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 reasonably anticipated danger of any criminal liability for failure to comply therewith, (iii) the Company shall conduct such proceedings or contest or dispute diligently and in good faith and (iv) the Company shall keep the Agency advised as to the status of such proceedings or contest or dispute. If the Company shall contest any Legal Requirement(s) and the Company so requests, the Agency, at the sole cost and expense of the Company, will reasonably cooperate in such contest to the extent that such cooperation is necessitated by reason of the Agency's leasehold or subleasehold interest in the Project Premises (Facility Improvements).

(c) In the event the Company shall receive notice of non-compliance with any Legal Requirement relating to the Project Premises, the Company shall promptly deliver written notice of such non-compliance to the Agency accompanied with a statement of the action intended to be taken by the Company or the applicable Landlord with respect thereto.

(d) The provisions of this Section 4.6 are for the sole benefit of the Agency and the Company, and no other Person whatsoever shall be or be deemed to be a third party beneficiary thereof or hereof.

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 Project Premises (Facility Improvements) shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Landlord and those authorized to exercise such right, or if the temporary use of the Project Premises (Facility Improvements) shall be so taken by condemnation or agreement (a "Loss Event"), the Agency shall have no obligation to rebuild, replace, repair or restore the Project Premises (Facility Improvements), and the Company shall promptly give notice of such Loss Event to the Agency, generally describing the nature and extent thereof.

(b) If (i) any of the respective Project Premises (Facility Improvements) are damaged, rendered inaccessible, acquired or condemned as a result of a Loss Event such that (1) such Project Premises (Facility Improvements) are untenable, (2) the Landlord does not restore such Project Premises (Facility Improvements) during the time frame required under the respective Prime Lease, or (3) the Landlord or the Company terminates the respective Prime Lease if, (ii) in excess of fifty percent (50%) of the Project Premises (Facility Improvements) is

damaged, destroyed, acquired or condemned as a result of a Loss Event and the Landlord and Company terminate the Prime Lease in accordance with the terms thereof, or if (iii) a Loss Event shall occur such that any of the respective Project Premises (Facility Improvements) shall be acquired or condemned, then, in any of such events, within sixty (60) days thereof, the Company shall deliver written notice of the same to the Agency, which notice shall acknowledge the termination of the same. Notwithstanding the foregoing, if the Company or the applicable Landlord shall determine, following a casualty or condemnation, to continue occupancy of the undamaged or uncondemned portion of the Project Premises (Facility Improvements), and abandon the damaged or condemned portion of the Project Premises (Facility Improvements), then the Company shall so notify the Agency promptly upon the making of such determination, and, provided that this Agreement shall not have been terminated by reason of the occurrence and continuance of an Event of Default hereunder, the abandoned portion of the Project Premises (Facility Improvements) shall be released from this Agreement and the Company Lease but the remainder shall continue to be leased or subleased (as the case may be) under this Agreement and the Company Lease.

The Company shall advise the Agency in writing of the action to be take by the Company with respect to rebuilding or continued occupancy after casualty under this Section 5.1(b) at the same time the Company is required to provide notice of the same to the applicable Landlord in accordance with the applicable Prime Lease.

(c) Any rebuilding, replacements, repairs or restorations of the Project Premises (Facility Improvements) by the Company (or the Landlord, as the case may be) following a Loss Event shall:

(i) automatically be deemed a part of the Project Premises (Facility Improvements) and leased to the Agency (and to the extent such rebuilding, replacement, repair or restoration shall be with respect to Facility Improvements, shall be owned by the Agency), and be subject to this Agreement and the Company Lease,

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

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

(iv) Provided there are Unrealized Sales Tax Savings, may be effected utilizing the Sales Tax Letter.

(d) The Agency and the Company shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, but the settlement, compromising, arbitration or adjustment of any such claim or demand shall be in the sole discretion of the Company. The Agency shall cooperate with the Company, at the sole cost and expense of the Company, in the settlement, compromise, arbitration or adjustment of any such claim and shall execute documents as shall be reasonably necessary to accomplish the same.

(e) Subject to Section 5.1(g), the Company shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed by the Company on or about the Project Premises (Facility Improvements) but which, at the time of such damage or taking, is not part of the Project Premises (Facility Improvements) and is owned by the Company.

(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.

(g) Nothing contained in this Agreement shall be deemed to modify the obligations of the Company under the Prime Lease with respect to condemnation proceeds which Prime Lease shall control the use of condemnation proceeds.

ARTICLE VI Particular Covenants

Section 6.1 (Reserved).

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, agent (excluding for this purpose the Company, which is not obligated hereby to indemnify its own employees, affiliated companies or affiliated individuals) thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, reasonable costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused, arising during the period commencing from February 10, 2004, 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), other than, with respect to any Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Project Premises or resulting from, arising out of, or in any way connected with:

(i) any financing by the Company in connection with the Project Premises (Facility Improvements) exclusive of the financing of the Project Building (One Bryant Park) with the proceeds of the Agency's Liberty Revenue Bonds, Series 2004 (One Bryant Park Project);

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project Premises (Facility Improvements) or any part thereof or the effecting of any work done in or about the Project Premises (Facility Improvements);

(iii) any defects (whether latent or patent) in the Project Premises (Facility Improvements);

(iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project Premises (Facility Improvements) or any portion thereof;

(v) the execution and delivery by the Indemnified Party or the Company of, or performance by the Indemnified Party or the Company, as the case may be, of any of its obligations under, this Agreement, or other document or instrument delivered in connection herewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby;

(vi) any injury to any Person or the personal property of any Person in or on the premises of the Project Premises (Facility Improvements);

(vii) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirements, including but not limited to, failure to comply with the requirements of the City's zoning resolution and State Environmental Quality Review Act and their respective related regulations;

(viii) 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 Project Premises (Facility Improvements);

(ix) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined) that are on, from, or affecting the Project Premises (Facility Improvements); 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 and expenses, investigation and laboratory fees, court costs, and litigation expenses; 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 the preceding subparagraphs (i) through (ix).

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 for, any Claims or Liability incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (ix) of Section 6.2(a) hereof, excluding any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party. 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 if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Company's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that the Company's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Company's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c) (i) In addition to and without limitation of 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 Project Premises (Facility Improvements) in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that except as set forth in the Transaction Screen Process Questionnaire, dated September 25, 2003, prepared by Hygienetics Environmental Services, Inc. with respect to 100 West 33rd Street, the Transaction Screen Questionnaire, dated September 25, 2003, prepared by Hygienetics Environmental Services, Inc. with respect to 335 Madison Avenue and the One Bryant Park Final Environmental Impact Statement, dated January 2004, prepared by AKRF, Inc., the Phase I Environmental Assessment, dated July 2003, prepared by AKRF, Inc., and the Phase I Environmental Site Assessment, dated November 1, 2004, prepared by URS Corporation, true and correct copies of which the Company has delivered to the Agency (collectively the "Audit"), to the best of the Company's knowledge, no prior owner, occupant or user of the Project Premises (Facility Improvements) has used Hazardous Materials on, from, or affecting the Project Premises (Facility Improvements) in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Company shall not cause or permit the Project Premises (Facility Improvements) 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 Project Premises (Facility Improvements), a release of Hazardous Materials onto the Project Premises (Facility Improvements) or onto any other property.

(iii) The Company shall comply with and shall ensure compliance by all occupants and users of the Project Premises (Facility Improvements) with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Project Premises (Facility Improvements) obtain and comply with, any and all approvals, registrations or permits required thereunder.

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

(v) the parties hereto agree that the reference in this Section 6.2 to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Company's obligations to carry put and perform all the covenants stated throughout this Section 6.2, including but not limited to, those covenants wherein the Company is obligated to indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

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, and to the extent prohibited by, 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.

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

(e) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the 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)(ix) 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 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) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

(g) The Agency acknowledges and agrees that if any claim is made against or involving the Indemnified Parties or if any suit is commenced which names the indemnified

parties as defendant(s) or co-defendant(s) or joins the indemnified parties as necessary party(ies), which in either case gives rise to the Company's indemnity as more fully provided in this Section 6.2, then, the Company's obligation to indemnify the Indemnified Parties and to hold the Indemnified Parties harmless from and against any such claim or liability as more fully provided in this Section 6.2 shall be fully satisfied if the Landlord or the insurance carrier for the Landlord pays any such claim or liability. The Agency further acknowledges and agrees that if any of the Indemnified Parties incurs any expense or is found liable in connection with any claim or suit (regardless of who conducts the defense of such claim or suit), and if such liability is the subject of the indemnity set forth in this Section 6.2, then, prior to and as a condition to the Company making any payment to the Indemnified Party(ies), the Indemnified Party(ies) shall assign to the Company any claim (or right or remedy) that it (or they) may have against any party (including the Landlord) in respect of such claim, suit or expense (so that the Company shall succeed to any such claim, right or remedy).

Section 6.3 Compensation and Expenses of Agency. The Company shall pay the reasonable out of pocket fees and costs and expenses (including legal, accounting and other administrative expenses) of the Agency, to the extent the same constitute Extraordinary Costs of Administration together with any reasonable fees and disbursements incurred by the Agency's Project Counsel in performing services for the Agency in connection with this Agreement and the Project Documents.

Section 6.4 Retention of Interest in Project Premises (Facility Improvements). Except for a transfer or conveyance of the Project Premises (Facility Improvements) to the Company pursuant to the provisions of the Project Documents, the Agency shall not sell, encumber (other than Permitted Encumbrances), assign or convey its interest in the Project Premises (Facility Improvements) or any part thereof or interest therein during the term of this Agreement without the prior written consent of the Company and the Landlord, if necessary, and any purported disposition without such consent shall be void.

Section 6.5 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project Premises (Facility Improvements) or any part thereof or the interest therein of the Agency or the Company or against the interest of the Company under this Agreement or the Company Lease other than (w) Liens granted by the Company in Facility Improvements or Facility Equipment to secure the financing or re-financing of the costs thereof, (x) Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, (y) Permitted Encumbrances, or (z) 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 or bonding 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 Project Premises (Facility Improvements) or the amounts payable under this Agreement.

(b) The Company may at its sole cost and expense contest, 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 Project Premises (Facility Improvements) or any part thereof or interest therein, or in this Agreement, or in any of the amounts payable under this Agreement, (2) neither the Project Premises (Facility Improvements) nor any interest therein would be in any reasonable danger of being sold, forfeited or lost, and (3) neither the Company nor the Agency, would likely be exposed to any criminal liability for failure to comply therewith.

(c) At the written request of the Agency, the Company shall provide to the Agency all reasonable information as may be requested with respect to any Lien (as described in Section 6.5(a) hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Company in connection therewith.

Section 6.6 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to Permitted Encumbrances (and any other title matters), so long as the Company shall duly observe all covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Company shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Project Premises (Facility Improvements) without molestation by or from the Agency or any Person claiming through the Agency.

Section 6.7 Further Assurances. The Company and the Agency will each 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 Agency or the Company deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and the Company Lease.

Section 6.8 No Warranty of Condition or Suitability. THE AGENCY HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS), ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT PROPERTY (FACILITY IMPROVEMENTS), OR THE SUITABILITY OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ANY OTHER PERSON. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) NOR THE COMPANY'S NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY SHALL ASSERT NO CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) IS NOT

SUITABLE OR FIT FOR ITS PURPOSES. 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 PROJECT PROPERTY (FACILITY IMPROVEMENTS) OR THE USE OR MAINTENANCE OF ANY THEREOF OR THE FAILURE OF OPERATION OF ANY THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT OF ANY 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 OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.9 Right to Cure Agency Defaults. The Agency hereby grants the Company full authority for the account of the Agency after first providing the Agency with ten (10) days prior written notice of such non-performance to perform any covenant or obligation the non-performance of which is alleged to constitute a default, in the name and stead of the Agency, with full power of substitution.

Section 6.10 Enforcement of Rights Under Prime Lease Against Landlord. The Company covenants and agrees that to the extent that the Landlord is obligated to the Company under the Prime Lease to comply (or to cause tenants to comply) with all Legal Requirements (the foregoing covenants of the Landlord being the "Landlord Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Landlord Covenants, and upon the direction of the Agency, the Company shall promptly exercise reasonable good faith diligent efforts to enforce the Landlord Covenants against the Landlord .

Section 6.11 Covenants with Respect to the Prime Lease. (a) The Company covenants and agrees that it shall not enter into an amendment, supplement or modification to any Prime Lease which would adversely affect the interests of the Agency (or otherwise amend, supplement, modify or waive any of the Landlord Covenants, as defined in Section 6.10 hereof which would adversely affect the interests of the Agency). Promptly following the execution thereof, the Company shall furnish copies of any amendment, supplement or modification to the applicable Prime Lease to 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 Prime Lease and further agrees to promptly transmit to the Agency copies of any termination or default notice it shall receive from, or deliver to, any Landlord under the Prime Lease.

Section 6.12 Release of Portions of the Project Premises (Facility Improvements). Upon at least ten (10) days prior written notice by the Company to the Agency, the Company shall have the right, exercised in good faith, to cause the release from this Agreement and from the Company Lease, of any portion of the Project Premises (Facility Improvements), provided, that, no such release shall diminish or impair the obligations of the Company under this Agreement (including, without limitation, the indemnifications, releases and hold harmless provisions contained in Sections 4.6 and 6.2 hereof), the obligations of the Company under Section 5.22 of the Project Agreement or the obligations of the Company under the Company Lease.

Section 6.13 Additional Project Premises (Facility Improvements).

(a) The Company shall further have the right, from time to time, to lease or license to the Agency pursuant to the Company Lease additional premises demised under the Prime Lease (the "Additional Project Premises") to be made subject to this Agreement and the Company Lease, on the condition, however, that:

(i) at least ten (10) days prior to the date upon which the Company wants to add the Additional Premises, the Company shall have delivered to the Agency a certificate of an Authorized Representative of the Company stating the intention of the Company to effect such letting or licensing, and certifying (A) as to the Additional Project Premises (Facility Improvements) to be leased, subleased, licensed or sublicensed to the Agency and the proposed date of such letting or licensing which date shall be a Business Day (the "Additional Project Premises (Facility Improvements) Closing Date"); (B) as to the aggregate rentable square feet which such Additional Project Premises (Facility Improvements) comprises or such other description of the space reasonably satisfactory to the Agency; (C) as to the aggregate rentable square feet of Project Premises (Facility Improvements) and any and all other space which the Agency would lease or license (as the case may be) after such letting and/or licensing; (D) as to a description of any Person (other than the Company or any Eligible Affiliate) as shall be occupying or using any portion of such Additional Project Premises (Facility Improvements) (accompanied by a true and complete copy of the lease or other use or occupancy agreement with such Person), the use by such Person of such space, that the Agency is not a landlord to such Person whether as a matter of agreement with such Person or by law, and the Agency has and shall have no landlord obligations or liabilities owing to such Person, that no such use is for a retail purpose, the rentable square feet occupied by each such Person, the aggregate amount of rentable square feet or such other description of the space reasonably satisfactory to the Agency of the Project Premises (Facility Improvements) after the letting of the Additional Project Premises (Facility Improvements) to the Agency as would be occupied by each Person, and the percentage of aggregate rentable square feet as would comprise the Project Premises (Facility Improvements) after such letting which would be used or occupied by all Persons other than the Company or Eligible Affiliates; (E) that other than that portion of the Additional Project Premises (Facility Improvements), stated to be used or occupied by Persons other than the Company or Eligible Affiliates, the space comprising the Additional Project Premises (Facility Improvements) will either remain vacant or be occupied and used by the Company and/or other Eligible Affiliates in the Company Business; and (F) that no "event of default" exists under the Prime Lease and no Event of Default exists under this Agreement, nor does an event exist which upon notice or lapse of time or both would constitute such an Event of Default; and

(ii) on the Additional Project Premises (Facility Improvements) Closing Date, the Agency shall, in its reasonable discretion, amend the Company Lease to add to the description of premises a leasehold or license interest in the Additional Project Premises (Facility Improvements) from the Company or any assignee of the Company under the Prime Lease pursuant to the Company Lease and the Agency shall receive:

(A) a "Phase I Environmental Audit" or a "transaction screen" with respect to the Additional Project Premises (Facility Improvements), if reasonably required by the Agency and such requirement is customary at the time of such additional leasing or licensing, reasonably satisfactory in form and substance to the Agency, by an environmental engineer who is reasonably acceptable to the Agency;

(B) an endorsement to the public liability and other insurance referred to in Section 4.4 hereof including such Additional Project Premises (Facility Improvements) within the property covered by such insurance; and

(C) a certificate of an Authorized Representative of the Company or any assignee of the Company under the Prime Lease certifying, as of the Additional Project Premises (Facility Improvements) Closing Date, as true and correct the matters set forth in Section 6.13(i) above;

then, on the Additional Project Premises (Facility Improvements) Closing Date, provided no "event of default" shall exist under the Prime Lease and no Event of Default shall exist under this Agreement, or an event which upon notice or lapse of time or both would become such an Event of Default, the Agency shall accept a leasehold interest in the Additional Project Premises (Facility Improvements), and shall enter into an amendment to this Agreement and to the Company Lease to reflect the inclusion of the Additional Project Premises (Facility Improvements) in the Project Premises (Facility Improvements) leased under this Agreement, the Prime Lease and the Company Lease.

Section 6.14 Company to Remain Tenant Under Prime Lease. In the event Bank of America, N.A. shall at any time or for any reason sell assign its interest in the Prime Lease to an Eligible Affiliate, the Company shall also assign their interest in this Agreement and in the Company Lease to such Eligible Affiliate and cause such Eligible Affiliate to assume in writing all of the obligations of the Company contained in this Agreement and the Company Lease jointly and severally with the Company and deliver to the Agency an opinion of counsel to the Company to the effect that such assignee or transferee shall be bound jointly and severally with the Company by all of the terms applicable to the Company under this Agreement, and the Company Lease.

Section 6.15 Limitation of Tax Exemptions. Neither the Company nor any Eligible Affiliate thereof shall claim any tax exemptions under the Sales Tax Letter for any improvements or renovations other than with respect to the Project Premises (Facility Improvements).

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 rent under Section 3.3 of this Agreement and continuance of such failure for a period of ten (10) days after receipt by the Company of notice thereof from the Agency;

(b) Failure of the Company to pay any amount (except the obligation of the Company to pay rent under Section 3.3 of this Agreement) that has become due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4, 4.5, 6.3, 6.10 or 9.2 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency;

(c) Failure of the Company to pay any amount or to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) above) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said 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;

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

(e) A proceeding or case shall be commenced against the Company, without the application or consent of the Company, 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 of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, 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 the Company shall acquiesce in writing to any of the foregoing; or any order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 4.1 of the Project Agreement;

(f) Any material representation or warranty made (i) by the Company in the application and related materials submitted to the Agency for approval of the Project or in any Project Documents, or (ii) by the Company herein or in the Project Agreement, or (iii) by the Company in any report, certificate, financial statement, summary of financial statements or other

instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made, or (y) if the same shall be capable of being cured, and shall not in fact be cured within thirty (30) days after the Company has knowledge, or receives notice, of the false, misleading or incorrect representation or warranty, or if such false, misleading or incorrect representation or warranty can reasonably be remedied over a reasonable period of time, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after having such knowledge or receiving said, or (z) shall not have been made in good faith;

(g) An "Event of Default" under the Project Agreement, or any other Project Document shall occur and be continuing beyond any grace or cure period thereunder;

(h) The Company shall become a Prohibited Person; provided, however, that in the event the Company becomes a Prohibited Person by virtue of clause (i) of the definition of "Prohibited Person", the same shall not give rise to an Event of Default hereunder unless (A)(1) Bank of America Corporation and Bank of America, N.A. are given written notice in accordance with Section 9.4 hereof that the Company has become a Prohibited Person, which notice shall set forth the underlying breach causing such status, (2) Bank of America Corporation and Bank of America, N.A. are given the opportunity to cure such underlying breach, and (3) in the case of a monetary breach the Company does not cure such underlying breach within thirty (30) days, in the case of a non monetary breach capable of cure within thirty (30) days, the Company does not cure such breach within thirty (30) days and in the case of a non monetary breach not capable of cure within thirty (30) days, the Company fails to proceed with reasonable diligence to cure the breach, and (B) the same is not the result of an Eligible Affiliate becoming insolvent or the subject of an insolvency or similar proceeding. For purposes of this provision, "control" of a person, as used in the definition of Prohibited Person, shall mean more than 50% ownership, directly or indirectly, of such person by Bank of America Corporation.

(i) The abandonment by the Company of all or substantially all of the Project Premises (Facility Improvements).

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 take any one or more of the following remedial steps:

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Company shall cease and terminate, and convey all of the Agency's right, title and interest in the Project Property (Facility Improvements) to the Company, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Company, a termination hereof, and the Company hereby waives delivery and acceptance of such termination as a condition to its validity and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the foregoing; or

(b) The Agency may bring an action for damages or specific performance; or

(c) The Agency may suspend or terminate the Sales Tax Letter or require the Company to surrender the Sales Tax Letter to the Agency for cancellation; or

(d) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the rental payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement.

Notwithstanding any other provision of this Agreement, no remedy of specific performance or injunction, stay or restraining order or other equitable remedy may be sought or obtained by the Agency to (y) prevent or delay or impede in any manner (1) any assignment by the Company of its interest in the Project Property (Facility Improvements), (2) any merger or corporate restructuring undertaken by the Company, (3) any reduction or relocation of employees or the Designated Operations and Facilities of the Company, (4) any proposed subletting of the Project Premises (Facility Improvements) consistent with Section 9.2 hereof, or (z) compel the use by the Company of the Project Property (Facility Improvements) or any portion thereof as a qualified "project" under the Act, and the Agency hereby absolutely and irrevocably waives any right to such remedy and any right to seek or obtain any such remedy. The foregoing shall not limit the Agency's rights to enforce recapture of Benefits, to cause forfeiture of Benefits, to terminate any Project Document or to enforce any monetary obligation of the Company hereunder or under the Project Documents.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from its obligations hereunder, 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 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 (subject to and in accordance with the limitations contained in Section 7.2 above) or 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 shall operate as a waiver.

Section 7.5 Effect of Discontinuance of Proceeding. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Agency, then, and in every such case after giving effect to any such adverse ruling, the Agency shall, at no cost to the Company, 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. If an Event of Default hereunder shall occur and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the 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 reasonable expenses so incurred.

ARTICLE VIII

Options; Termination on Exercise of Option

Section 8.1 Options. (a) The Company shall have the option to terminate the Agency's leasehold interest in the Project Premises (Facility Improvements) and to terminate this Agreement on any date during the term hereof by paying all amounts due under the Project Agreement and all rental payments due hereunder. The Company shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Company to the Agency stating that the Company has elected to exercise its option under this Section 8.1(a) and the date on which such exercise and termination is to be made. In addition, the Company shall terminate the Agency's leasehold interest in the Project Premises (Facility Improvements) on the scheduled expiration date of this Agreement by paying on such date any and all amounts due under the Project Agreement and any and all rental payments then due hereunder.

(b) The Company shall not, at any time, assign or transfer its option under this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.2 hereof without the prior written consent of the Agency.

Section 8.2 Termination on Exercise of Option. At the closing of any termination of the Agency's interest in the Project Premises (Facility Improvements) pursuant to Section 8.1 hereof, the Agency will, upon payment of any and all amounts due under the Project Agreement and any and all rental payments then due hereunder, deliver or cause to be delivered to the Company, at the sole cost and expense of the Company, (a) documents (the form of which may be provided by the Company so long as the Agency shall make no covenants or warranties thereunder nor have any liability by reason of such documents) terminating the Agency's right, title and interest in the Project Premises (Facility Improvements), and (b) documents releasing and conveying to the Company all of the Agency's rights and interests in and to any rights of action, or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards with respect to the Project Premises (Facility Improvements).

ARTICLE IX
Miscellaneous

Section 9.1 Force Majeure. If, because of the occurrence of a casualty (hereafter, a "Loss Event") that damages or renders unusable at least 200,000 rentable square feet of the One Bryant Park Project Premises (Facility Improvements) or at least 200,000 rentable square feet of office space at any other Approved Company Location occupied and used by the Company immediately prior to such Loss Event, it becomes necessary for the Company to relocate those Eligible Employees who occupied such affected premises to a location outside of the City and such relocation would otherwise result in a Relocation Reduction or a relocation of Designated Operations and Facilities hereunder, then the following shall apply:

(a) the provisions of the Agreement relating to calculation of Recapture Payments and the forfeiture of Benefits with respect to such Relocation Reduction and relocation of Designated Operations and Facilities shall be suspended and tolled for the period of suspension, with the effect that the Term of the Agreement and of the time periods used in such Benefits recapture provisions shall be extended by the suspension, subject to the provisions of (c) and (d) below;

(b) the Company shall not be entitled to Benefits during the period of suspension;

(c) with respect to a Relocation Reduction or a relocation of Designated Operations and Facilities resulting from a Loss Event affecting the One Bryant Park Project Premises (Facility Improvements) the Company shall inform the Agency within eighteen (18) months of such Loss Event whether it intends to cause the One Bryant Park Project Premises (Facility Improvements) to be reconstructed (failure to so notify the Agency shall be deemed to be an election to not reconstruct and paragraph (d) of this Section 9.1 will apply). If the Company elects to cause the One Bryant Park Project Premises (Facility Improvements) to be rebuilt, the term of the suspension shall continue for the period of reconstruction. If the Company fails to return such number of relocated Employees from locations outside of the City to the One Bryant Park Project Premises (Facility Improvements) upon completion of construction, such Reduction shall be treated as a Relocation Reduction or a relocation of Designated Operations and Facilities as the case may be, and the Company shall make a Recapture Payment to Agency based on the recapture provisions that applied at the time of the Loss Event based upon the number of relocated Employees not returned to the City, plus interest on such Recapture Amount at a per annum rate of 7.75% from the date of the Relocation Reduction or the relocation of Designated Operations and Facilities as the case may be, plus additional Recapture Payments of Company Real Property Tax Savings for subsequent Annual Periods. If the Company returns such relocated Employees to the City no recapture or forfeiture of Benefits for a Relocation Reduction or a relocation of Designated Operations and Facilities shall occur for relocation of Employees with respect to the Loss Event.

(d) If the Company does not elect to cause the One Bryant Park Project Premises (Project Premises Facility Improvements) to be reconstructed, the Company shall have three years, or if the Loss Event occurred at another Approved Company Location, two years, from the occurrence of such Loss Event to return such number of relocated Employees from

locations outside of the City to the City and end the period of suspension. If the Company does not elect to return such Employees to the City within such applicable time period then:

(i) if the Agency determines that such decision is reasonable based on the facts and circumstances at the time of the Company's determination (including, but not limited to whether there is a comparable alternative location within the City reasonably available to the Company for the conduct of its business), such Reduction shall be treated as a Relocation Reduction or a relocation of Designated Operations and Facilities as the case may be and the Company shall make a Recapture Payment to the Agency based on the recapture provisions that applied at the time of the Loss Event, without application of the Multiplier Factor, as applied to the amount equal to the Aggregate Benefits realized plus interest at a per annum rate of 7.75% from January 1st of the Annual Period in which such Benefits were realized, plus additional Recapture Payments of Company Real Property Tax Savings for subsequent Annual Periods (but in no event shall such Recapture Payment exceed the amount that would be due if clause (ii) below applied); or

(ii) if the Agency determines that such decision is unreasonable based on the facts and circumstances at the time of the Company's determination, then such Reduction shall be treated as a Relocation Reduction or a relocation of Designated Operations and Facilities as the case may be, and the Company shall make a Recapture Payment to the Agency based on the recapture provisions that applied at the time of the Loss Event, plus interest on the Recapture Amount at a per annum rate of 7.75% from the date of such Relocation Reduction or a relocation of Designated Operations and Facilities as the case may be, plus additional Recapture Payments of all Company Real Property Tax Savings and Company MRT Savings for subsequent Annual Periods.

The Company shall promptly notify the Agency upon the occurrence of each Force Majeure affecting the Company, 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 occurrence. 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.

(e) Provisions of this Section 9.1 shall survive the termination of this Agreement.

Section 9.2 Assignment or Sublease. (a) The Company shall not at any time (i) assign or transfer this Agreement or (ii) sublease, any portion of the Project Premises (Facility Improvements), without the prior written consent of the Agency (which consent shall be in the sole discretion of the Agency); provided, that with respect to any such assignment, transfer or sublease, (1) the Company shall nevertheless remain liable to the Agency for the payment of all rent 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 shall have executed and delivered to the Agency an instrument, in form for recording, in and by which the assignee or transferee shall have assumed in writing and agreed to keep and perform all of the terms of this Agreement (and of each other Project Document to which the Company shall be a party) on the part of the Company to be kept and performed, shall be jointly and severally liable with the Company for the performance thereof, shall be subject to

service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment or transfer shall not cause the obligations of the Company and all of the terms, covenants and conditions of this Agreement, or of any other Project Document to which the Company shall be a party, to cease to be legal, valid and enforceable against the Company, (4) any assignee or transferee shall utilize the Project Property (Facility Improvements) as a qualified "project" as defined in 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 4.4 of this Agreement and the Company shall furnish written evidence reasonably satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, and (7) each such assignment or transfer contains such other provisions as the Agency may reasonably require (which the Agency shall provide within 15 days after request by the Company). 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 ten (10) days prior to the date of execution thereof.

(b) Subject to the prior written consent of the Agency (which consent shall be in the sole discretion of the Agency), the Company may without any change or reduction in the benefits afforded herein (provided that the Company must continue to comply with Section 5.22 of the Project Agreement), sublet portions of the Project Premises (Facility Improvements) to one or more Non-Qualified Users, provided in each case that (1) no such sublessee is a Prohibited Person, (2) the Company shall remain liable to the Agency for the payment of all rent 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, (3) any sublessee shall utilize the Facility Realty as a qualified "project" as defined in the Act, and (4) prior to the entering into of such sublease, the Company shall have delivered to the Agency:

(i) a copy of the proposed sublease indicating the proposed term, all renewal options, and the amount of rentable square feet to be sublet,

(ii) the identity of the proposed subtenant and the identity of its principal officers, and, if not a publicly traded corporation, the identity of its principal stockholders, and the proposed use of the space to be sublet,

(iii) the precise location of the space to be sublet, and

(iv) evidence reasonably satisfactory to the Agency that such sublease will not diminish or impair the obligation of the Company to carry the insurance required under Section 4.4 hereof, and that such insurance coverage shall in no manner be limited by such sublease.

(c) In the event the Agency shall reasonably request additional information with respect to the proposed sublease or subtenant, the Company shall deliver such information to the Agency promptly after such request. Whether or not any conditions set forth above shall be satisfied, the Company may, in accordance with Section 6.12 hereof, cause such proposed sublet space to be excluded from the Project Premises (Facility Improvements) (1) leased by the

Company to the Agency pursuant to the Company Lease, and (2) by the Agency to the Company pursuant to this Agreement.

(d) Any consent by the Agency to any act of assignment, transfer or sublease with respect to this Agreement 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, transfer or sublease with respect to this Agreement or as modifying or limiting the rights of the Agency or the obligations of the Company under this Section 9.2.

(e) The Company shall have the right to request that the Agency confirm in writing to the Company whether any assignee or transferee of this Agreement or sublessee of the Facility Realty is a Prohibited Person, or whether any assignment, transfer or sublease would cause the Facility Realty to no longer be a qualified "project" under the Act. Within ten (10) Business Days after the Agency receives any such written request of the Company (which request shall include pertinent information relating to the proposed assignee, sublessee or transferee), or if the Agency shall reasonably request further information of the Company, then within ten (10) Business days after the receipt by the Agency of the additional information so requested, the Agency shall confirm to the Company (in writing) whether or not the assignee, transferee or sublessee is a Prohibited Person or whether the assignment, transfer, or sublease would cause the Facility Realty to cease to be a qualified "project" under the Act. The Agency agrees that if it does not, within the aforementioned time periods, deliver notice to the Company stating whether or not such assignee, transferee or sublessee is a Prohibited Person, the Company shall be entitled to assume that the assignee, transferee or sublessee is not a Prohibited Person, and that the assignment or sublease would not cause the Facility Realty to cease to be a qualified "project" under the Act. The Company shall be entitled to conclusively rely on such confirmation (or waiver) in connection with any assignment, transfer or sublease.

Section 9.3 Amendments. This Agreement may be amended only in a written instrument executed by the Agency and the Company.

Section 9.4 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, or by hand, addressed, if to the Agency, to the Chairman, New York City Industrial Development Agency, 110 William Street, New York, New York, with a copy to the Executive Director of the Agency at the same address, and if to the Company, Bank of America, N.A., 525 North Tryon Street, 3rd Floor, Charlotte, North Carolina 28255, Attention: John G. Saclarides, Senior Vice President, with a copy to Wade White at the same address, with copies of any default notices to the Company's counsel, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036, Attention: Neil L. Rock, Esq. The Agency and the Company may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed, or if delivered, on the date actually received or the date on which receipt is refused.

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 Project Premises (Facility Improvements), other than the other Project Documents.

Section 9.6 Severability. If any clause, provision or section of this Agreement were 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 Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.8 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 9.9 Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.10 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 PROJECT PROPERTY (FACILITY IMPROVEMENTS) OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. THIS SECTION 9.10 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 9.11 No 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 his individual capacity. 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 create a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable on any obligation so incurred, and any such obligation shall be payable solely out of the amounts payable by the Company under this Agreement. All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any director, officer, employee or agent of the Company in their individual capacity.

Section 9.12 Subordination. With respect to the Project Premises (Facility Improvements) leased by the Company, this Agreement is and shall be subject and subordinate in all respects to the Prime Lease and to all the matters to which the Prime Lease is subject and subordinate.

Section 9.13 Inspection of Project Property (Facility Improvements). The Company will permit the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice and in compliance with standard security procedures of the Company in connection with inspections to enter upon the Project Premises (Facility Improvements) to examine and inspect the Project Property (Facility Improvements) and exercise its rights hereunder and under the other Project Documents with respect to the Project Property (Facility Improvements). The Company will further permit the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice to enter upon the Project Premises (Facility Improvements) but solely for the purpose of assuring that the Company is operating the Project Property (Facility Improvements), or is causing the Project Property (Facility Improvements) to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Project Property (Facility Improvements) as such latter obligation is and shall remain solely the obligation of the Company.

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. The date of this Agreement is November 1, 2004.

Section 9.15 Investment Tax Credit. It is the intention of the parties that as between the Agency and the Company, (a) the Company shall be entitled to all depreciation deductions with respect to the Project Premises (Facility Improvements) under Section 167 or 168 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Project Premises (Facility Improvements) and any comparable state and local income tax benefits (whether now existing or hereafter enacted or adopted); and (b) without limiting the generality of the foregoing, any investment tax credit or comparable credit which may ever be available shall accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Company to have such benefit. The Agency makes no representation or warranty whatsoever, however, that any such tax benefits would be available to either the Agency or the Company.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director or Deputy Executive Director and the Company has caused its name to be subscribed hereto by an authorized officer all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Kei H.
Name: Kei Hayashi
Title: Deputy Executive Director

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

BANK OF AMERICA CORPORATION

By: _____
Name:
Title:

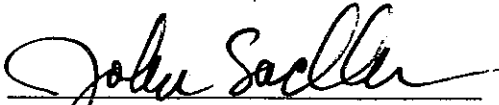
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IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director or Deputy Executive Director and the Company has caused its name to be subscribed hereto by an authorized officer all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Kei Hayashi
Title: Deputy Executive Director

BANK OF AMERICA, N.A.

By: 
Name:
Title:

BANK OF AMERICA CORPORATION

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director or Deputy Executive Director and the Company has caused its name to be subscribed hereto by an authorized officer all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Kei Hayashi
Title: Deputy Executive Director

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

BANK OF AMERICA CORPORATION


By: Mand Oke
Name:
Title: CFO

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 17th day of November in the year 2004, before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/The City of New York personally appeared Kei Hayashi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.



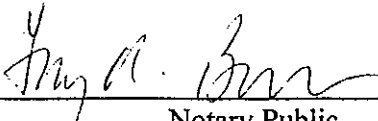
Notary Public/Commissioner of Deeds

Notary Public
Qualified in
Commission Expires

2007

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

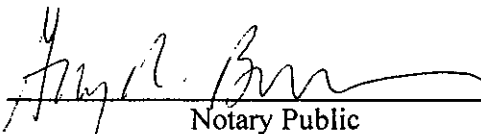
On the 17th day of November in the year 2004, before me, the undersigned, personally appeared Marc D Oken, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.



Notary Public
GARY F. BASSO
NOTARY PUBLIC, State of New York
No. 4880911
Qualified in Westchester County
Commission Expires Dec. 29, 2006

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

On the 17th day of November in the year 2004, before me, the undersigned, personally appeared John E. Sicularides, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.



Notary Public
GARY F. BASSO
NOTARY PUBLIC, State of New York
No. 4880911
Qualified in Westchester County
Commission Expires Dec. 29, 2006

APPENDIX A

DESCRIPTION OF PROJECT PREMISES (FACILITY IMPROVEMENTS)

The Project Premises (Facility Improvements) shall, collectively, mean the Project Premises (Facility Improvements) described below.

<i>Street Address</i>	<i>Block/Lot</i>	<i>Floors</i>	<i>Approximate square feet</i>
One Bryant Park (a/k/a 1111 Avenue of the Americas) New York, New York	Block 995, Lots 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 (f/n/a lots 28, 130 & 131), 29, 33, 34 (f/n/a lots 34, 134 & 136), 35, 36, 137, 37, 38, 45 and 48		1.1 million
100 West 33rd Street New York, New York	[]	3&4	181,223
335 Madison Avenue New York, New York	[]	4 through 7 and 14	206,287