
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
New York, New York

INDUSTRIAL INCENTIVE PROGRAM
(STRAIGHT-LEASE TRANSACTION)

2007 Barone Steel Fabricators, Inc. Project

RECORD OF PROCEEDINGS

Delivered August 29, 2007

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5

6

7

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
New York, New York

INDUSTRIAL INCENTIVE PROGRAM
(STRAIGHT-LEASE TRANSACTION)

2007 Barone Steel Fabricators, Inc. Project

TABLE OF CONTENTS

**Document
Number**

Basic Documents

1. Lease Agreement, dated as of August 1, 2007, between the New York City Industrial Development Agency (the "Agency") and 128 44th Realty Holding LLC (the "Lessee").
2. Company Lease Agreement, dated as of August 1, 2007, between the Lessee and the Agency.
3. Sublease Agreement, dated as of August 1, 2007, between the Lessee and Barone Steel Fabricators, Inc. (the "Sublessee").
4. Guaranty Agreement, dated as of August 1, 2007, from the Lessee and the Sublessee, Bar Fab Steel Corp., as corporate guarantor (the "Corporate Guarantor") and from Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency.

Closing Documents Delivered by the Agency

5. Copies of Chapter 1030 of the 1969 Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended.
6. Certificate as to establishment of the Agency and as to appointment of the members thereof.
7. Agency General Certificate.
8. Approving Opinion of Hawkins Delafield & Wood LLP and reliance letter.
9. Directive to the Tax Assessor regarding payments in lieu of taxes.
10. Tax Continuation Letter.

11. Affidavit as to taxation.
12. Opinion of the Vice President for Legal Affairs of the Agency.

Documents Delivered by the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors

13. Letter of Representation, dated August 29, 2007, from the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors to the Agency and SI Bank & Trust (Sovereign Bank) (the "Bank").
14. Certificate of the Lessee as to Compliance with Insurance Requirements.
15. Member's Certificate of the Lessee.
 - Exhibit A - Articles of Organization of the Lessee
 - Exhibit B - Operating Agreement of the Lessee
 - Exhibit C - Consent of the Lessee
16. Certificate of Good Standing of the Lessee.
17. Secretary's Certificate of the Sublessee.
 - Exhibit A - Certificate of Incorporation of the Sublessee
 - Exhibit B - Bylaws of the Sublessee
 - Exhibit C - Authorizing Resolutions of the Sublessee
18. Certificate of Good Standing of the Sublessee.
19. Secretary's Certificate of the Corporate Guarantor.
 - Exhibit A - Certificate of Incorporation of the Corporate Guarantor
 - Exhibit B - Bylaws of the Corporate Guarantor
 - Exhibit C - Authorizing Resolutions of the Corporate Guarantor
20. Certificate of Good Standing of the Corporate Guarantor.
21. Tax Status Certificates of the Lessee, Sublessee and the Corporate Guarantor.
22. Copies of leasehold title insurance policy and mortgagee title insurance policy with respect to the Facility Realty.
23. Copy of certified survey.
24. Certificate of Architect.
25. Opinion of Caruso, Caruso & Branda PC, Counsel to the Lessee, the Sublessee and the Individual Guarantors.

Miscellaneous

26. Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 29, 2007, from the Agency and the Lessee to the Bank (First Mortgage).
27. Promissory note, dated August 29, 2007, from the Lessee to the Bank (First Mortgage Note).
28. Bridge Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 29, 2007, from the Agency and the Lessee to the Bank (Bridge Mortgage).
29. Promissory note, dated August 29, 2007, from the Lessee to the Bank.
30. Copy of Letter of Authorization for Sales Tax Exemption.
31. Memorandum of Closing.



LEASE AGREEMENT

Dated as of August 1, 2007

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

128 44TH REALTY HOLDING LLC

2007 Barone Steel Fabricators, Inc. Project

Affecting the Land generally known by the street address
128 44th Street, Brooklyn, New York 11232
Section 3, Block 735 and Lot 50

in the County of Kings,
City and State of New York
as more particularly described in
Exhibit A to this Lease Agreement
on the Official Tax Map of Kings County

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

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1. Definitions 4
Section 1.2. Construction 10
Section 1.3. Representations and Warranties by Agency 11
Section 1.4. Findings by Agency 11
Section 1.5. Representations and Warranties by the Lessee 11

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1. The Company Lease 15
Section 2.2. The Project 15
Section 2.3. Leasehold Title Insurance 16
Section 2.4. Limitation on Sales Tax Exemption 17

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1. Lease of the Facility 21
Section 3.2. Duration of Term 21
Section 3.3. Rental Provisions 21
Section 3.4. Rental Payments Payable Absolutely Net 21
Section 3.5. Nature of Lessee's Obligation Unconditional 22
Section 3.6. Assignment of Sublease Agreement 22

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements 23
Section 4.2. Removal of Property of the Facility 24
Section 4.3. Payment in Lieu of Real Estate Taxes 25
Section 4.4. Taxes, Assessments and Charges 31
Section 4.5. Insurance 32
Section 4.6. Advances by Agency 34
Section 4.7. Compliance with Legal Requirements 35

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage, Destruction and Condemnation 36

TABLE OF CONTENTS

Page

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1. Dissolution of Lessee; Restrictions on Lessee 39

Section 6.2. Indemnity 39

Section 6.3. Compensation and Expenses of the Agency 43

Section 6.4. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Facility 43

Section 6.5. Discharge of Liens 44

Section 6.6. Agency’s Authority; Covenant of Quiet Enjoyment 45

Section 6.7. No Warranty of Condition or Suitability 45

Section 6.8. Financial Statements; No-Default Certificates 45

Section 6.9. Employment Information, Opportunities and Guidelines 46

Section 6.10. Further Assurances 47

Section 6.11. Recording and Filing 47

Section 6.12. Further Encumbrances 47

Section 6.13. Subtenant Survey 48

Section 6.14. Signage at Project Site 48

Section 6.15. Certain Continuing Representations 48

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1. Events of Default 49

Section 7.2. Remedies on Default 50

Section 7.3. Remedies Cumulative 51

Section 7.4. No Additional Waiver Implied by One Waiver 51

Section 7.5. Effect on Discontinuance of Proceedings 51

Section 7.6. Agreement to Pay Attorneys’ Fees and Expenses 52

ARTICLE VIII

OPTIONS TO TERMINATE; RECAPTURE OF BENEFITS

Section 8.1. Option to Terminate Agreement 53

Section 8.2. Release of Interest in Facility upon Exercise of Option to Terminate 53

Section 8.3. [Reserved] 54

Section 8.4. Termination of Agreement 54

Section 8.5. Recapture of Public Benefits 54

ARTICLE IX

MISCELLANEOUS

Section 9.1. Force Majeure 58

TABLE OF CONTENTS

	<u>Page</u>
Section 9.2. Priority	58
Section 9.3. Assignment or Sublease	59
Section 9.4. Amendments	60
Section 9.5. Notices	61
Section 9.6. Prior Agreements Superseded	62
Section 9.7. Severability	62
Section 9.8. Inspection of Facility	62
Section 9.9. Effective Date; Counterparts	62
Section 9.10. Binding Effect	62
Section 9.11. Third Party Beneficiaries	62
Section 9.12. Law Governing	62
Section 9.13. Waiver of Trial by Jury	62
Section 9.14. Non-Discrimination	62
Section 9.15. Recourse Under This Agreement	63
Section 9.16. Date of Agreement for Reference Purposes Only	63

Appendices

Exhibit A - Description of the Land	
Exhibit B - Project Cost Budget	
Exhibit C - Form of Sales Tax Letter	
Exhibit D - ST-340 Annual Report of Sales and Use Tax Exemptions	
Schedule A - Form of Project Completion Certificate	
Schedule B - Annual Employment and Benefits Report	
Schedule C - Annual Subtenant Survey	
Schedule D - Location and Contact Information	
Schedule E - Required Disclosure Statement	
Schedule F - Exceptions to Section 1.5 (w)	

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of August 1, 2007 (this "**Agreement**"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **128 44TH REALTY HOLDING LLC**, a limited liability company organized and existing under the laws of the State of New York (the "**Lessee**"), having its principal office at 128 44th Street, Brooklyn, New York 11232, party of the second part;

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and Barone Steel Fabricators, Inc., a New York corporation (the "**Sublessee**"), for a "project" within the meaning of the Act within the territorial boundaries of the City and located on those certain lots, pieces or parcels of land in Section 3, Block 735 and Lot 50, generally known as and by the street address 128 44th Street, Brooklyn, New York (the "**Land**") and otherwise described in Exhibit A — "Description of Land" — attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and renovation of an industrial facility (the "**Facility**"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Sublessee in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area, (the "**Project**"); and

WHEREAS, to facilitate the Project, the Agency, the Lessee and the Sublessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Lessee will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency (as the same may be amended or supplemented, the "**Company Lease**"), (ii) the Agency will sublease its interest in the Facility Realty to the Lessee pursuant to this Agreement, and (iii) the Lessee will sub-sublease its interest in the Facility Realty to the Sublessee pursuant to a certain Sublease Agreement, dated as of even date herewith, between the Lessee and the Sublessee (as the same may be amended or supplemented, the "**Sublease Agreement**"), and, in furtherance of such purposes, the Agency adopted a resolution on July 23, 2007 (the "**Authorizing Resolution**"), authorizing the undertaking of the Project, the acquisition and renovation of the Facility by the Lessee, the lease of the Facility Realty by the Lessee to the Agency, the sublease of the Facility Realty by the Agency to the Lessee, and the sub-sublease of the Facility Realty by the Lessee to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the cost of the Project is being financed in part through (i) a loan in the principal amount of \$2,915,000 to be made by SI Bank & Trust (Sovereign Bank) (the "**First Mortgage**") to the Lessee (the "**First Mortgage Loan**"), (ii) a loan in the principal amount of \$1,945,000 to be made by Empire State Certified Development Corporation (the "**Second Mortgage**") to the Lessee (the "**Second Mortgage Loan**"), and (iii) equity furnished by the Lessee and/or the Sublessee and/or the proceeds of additional lending; and

WHEREAS, in order to evidence its obligation to repay the First Mortgage Loan, the Lessee will issue to the First Mortgagee a certain mortgage note (the "**First Mortgage Note**"), dated the Commencement Date, in the principal amount of the First Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Lessee to the First Mortgagee under the First Mortgage Note, the Lessee and the Agency will grant a first mortgage on the Facility to the First Mortgagee, subject to permitted encumbrances thereon, pursuant to a certain mortgage and security agreement, dated the Commencement Date (as the same may be amended or supplemented, the "**First Mortgage**"), from the Lessee and the Agency to the First Mortgagee; and

WHEREAS, in order to evidence its obligation to repay the Second Mortgage Loan, the Lessee will issue to the Second Mortgagee a certain mortgage note, to be entered into at a future date (the "**Second Mortgage Note**"), in the principal amount of the Second Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Lessee to the Second Mortgagee under the Second Mortgage Note, the Lessee will grant a second mortgage on the

Facility to the Second Mortgagee, subject to permitted encumbrances thereon, pursuant to a mortgage and security agreement, to be entered into at a future date (as the same may be amended or supplemented, the "Second Mortgage"), from the Lessee to the Second Mortgagee; and

WHEREAS, the proceeds of the Second Mortgage Loan will not be available to the Lessee on the Commencement Date; and

WHEREAS, in order to provide bridge financing for a portion of the anticipated proceeds of the Second Mortgage Loan, the First Mortgagee has agreed to make an advance to the Lessee in the amount of \$1,945,000 on the Commencement Date (the "**Bridge Loan**"); and

WHEREAS, the Bridge Loan is to be evidenced by a certain mortgage note, dated the Commencement Date (the "**Bridge Loan Mortgage Note**"), and secured by a certain mortgage and security agreement, dated the Commencement Date (as the same may be amended or supplemented, the "**Bridge Loan Mortgage**"), from the Lessee to the First Mortgagee; and

WHEREAS, the Second Mortgage Loan will be made for the benefit of the Lessee, and the Lessee will pay to the First Mortgagee from the proceeds of the Second Mortgage Loan all amounts owing under the Bridge Loan, and the Bridge Loan Mortgage will be satisfied in full; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will lease the Facility Realty to the Agency pursuant to the Company Lease, subject to Permitted Encumbrances, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein; and

WHEREAS, pursuant to this Agreement, the Agency will sublease the Facility Realty to the Lessee; and

WHEREAS, pursuant to Section 4.3 of this Agreement, the Lessee has agreed to make certain payments in lieu of real estate taxes with respect to the Land and the Improvements;

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

Additional Rent shall mean any additional rental payments described in Section 3.3(b) of this Agreement.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

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

Agreement shall mean this Lease Agreement, dated as of August 1, 2007, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean the industrial facility located at 128 44th Street, Brooklyn, New York, for use in the business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, a Managing Member or member of the Lessee or any other employee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency, (iii) in the case of the Sublessee, the Chairperson, Vice Chairperson, President, Treasurer and any Vice President or any other employee of the Sublessee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Sublessee has given written notice to the Agency (iv) in the case of the

Corporate Guarantor, the Chairperson, Vice Chairperson, President, Treasurer and any Vice President or any other employee of the Corporate Guarantor who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Corporate Guarantor has given written notice to the Agency and (v) in the case of an Individual Guarantor, such Individual Guarantor; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Base Rent shall mean the rental payment described in Section 3.3(a) of this Agreement.

Bridge Loan shall mean the loan by the First Mortgagee to the Lessee in the amount of \$1,945,000, representing the principal amount of the Bridge Loan Mortgage, in connection with the Project.

Bridge Loan Mortgage shall mean the Bridge Loan Mortgage referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity therewith.

Bridge Loan Mortgage Note shall mean the Bridge Loan Mortgage Note referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity with the Bridge Loan Mortgage.

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

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

Commencement Date shall mean August 29, 2007, on which date this Agreement was delivered.

Company Lease shall mean that certain Company Lease Agreement, dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Completion Date shall mean July 31, 2008.

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Corporate Guarantor shall mean Bar Fab Steel, Corp., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns under the Guaranty Agreement.

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

Exempt Property shall mean only the materials to be used with respect to the acquisition of a leasehold interest in the Facility and the acquisition and renovation of the Facility in connection with the Project, on or before the date of completion of the Project (as evidenced in accordance with Section 2.2 hereof) for incorporation in the Facility or for use in connection with the Facility.

Expiration Date shall mean June 30, 2033.

Facility shall mean the Facility Realty.

Facility Realty shall mean, collectively, the Land and the Improvements.

Final Project Cost Budget shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Lessee pursuant to Section 2.2 hereof upon completion of the Project, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., borrowed funds, equity, etc.) for each cost item.

First Mortgage shall mean the First Mortgage referred to in the recitals to this Agreement and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

First Mortgagee shall mean SI Bank & Trust, a division of Sovereign Bank, a federal savings bank, and its successors and assigns under the First Mortgage.

First Mortgage Loan shall mean the loan by the First Mortgagee to the Lessee in the amount of \$2,915,000, representing the principal amount of the First Mortgage, in connection with the Project.

First Mortgage Note shall mean the First Mortgage Note referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity with the First Mortgage.

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

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Guarantors shall mean, collectively, the Lessee, the Sublessee and the Individual Guarantors, and their respective permitted estates, successors and assigns.

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

Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.2 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld or delayed).

Individual Guarantors shall mean, collectively, Nicky Barone and Ralph Barone, and their respective estates, administrators, successors and assigns.

Land shall mean those certain lots, pieces or parcels of land in Section 3, Block 735 and Lot 50, generally known by the street address 128 44th Street, Brooklyn, New York, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Lessee shall mean 128 44th Street, Realty Holding LLC, a New York limited liability company, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof.

Lessee's Property shall have the meaning specified in Section 4.1(c) hereof.

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

Loans shall mean, collectively, the First Mortgage Loan, the Bridge Loan and the Second Mortgage Loan.

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

Mortgagees shall mean, collectively, the First Mortgagee and the Second Mortgagee and their respective successors and assigns pursuant to their respective Mortgages.

Mortgage Notes shall mean, collectively, the First Mortgage Note, the Bridge Mortgage Note and the Second Mortgage Note and shall include any and all amendments thereof and supplements thereto hereafter made in conformity with the respective Loans.

Mortgages shall mean, collectively, the First Mortgage, the Bridge Loan Mortgage and the Second Mortgage and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

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

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

Permitted Encumbrances shall mean:

(i) this Agreement, the Company Lease, the Sublease Agreement and the Mortgages;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;

(iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility property or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Sublessee's use and enjoyment of the Facility as herein provided;

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby

for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(vii) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof insuring the leasehold interest of the Agency in the Facility Realty, a copy of which is on file at the offices of the Agency.

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

PILOT Commencement Date shall mean July 1, 2008.

PILOT Depository shall mean The Bank of New York, a banking corporation organized and existing under the laws of the State of New York, or its successors.

Principal(s) shall mean, with respect to any Person, the most senior three officers of such Person, any Person with a ten percent (10%) or greater ownership interest in such Person, and any Person as shall have the power to Control such Person.

Project shall have the meaning ascribed thereto in the recitals hereto.

Project Cost Budget shall mean that certain budget for costs of the Project as set forth by the Lessee in Exhibit B — “Project Cost Budget” — attached to this Agreement.

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

Project Documents shall mean the Company Lease, this Agreement, the Sales Tax Letter, the Sublease Agreement, the Guaranty Agreement, the Mortgages and the Mortgage Notes.

Rental Payments shall mean, collectively, Base Rent and Additional Rent.

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Schedule E attached hereto and made a part hereof. Each certification, representation and warranty set forth in a Required Disclosure Statement delivered to the Agency shall be deemed incorporated by reference into this Agreement as if fully set forth herein.

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

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, substantially in the form set forth in the appendices to this Agreement and to be delivered pursuant to Section 2.4(c) of this Agreement on the Commencement Date.

Second Mortgage shall mean the Second Mortgage referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity therewith.

Second Mortgagee shall mean Empire State Certified Development Corporation, a corporation organized and existing under the laws of the State of New York, and its successors and assigns under the Second Mortgage.

Second Mortgage Loan shall mean the loan by the Second Mortgagee to the Lessee in the amount of up to \$1,945,000, representing the principal amount of the Second Mortgage, in connection with the Project.

Second Mortgage Note shall mean the Second Mortgage Note referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity with the Second Mortgage.

State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease Agreement, dated as of even date herewith, between the Lessee, as sublessor, and the Sublessee, as sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Sublessee shall mean, Barone Steel Fabricators, Inc., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns under the Sublease Agreement.

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

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 Commencement Date.

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

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

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

Section 1.3 Representations and Warranties by Agency. The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) assuming the accuracy of the representations made by the Lessee and by the Sublessee, is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and (iii) by proper action of its board of directors, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

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

(i) the providing of financial assistance (within the meaning of the Act) through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee and the Sublessee to proceed with the Project;

(ii) the Project is reasonably necessary to induce the Sublessee to remain and expand its operations within the City;

(iii) the transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of the Sublessee or any other occupant or user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or of the Sublessee or of any other occupant or user of the Facility located within the State (but outside of the City); and

(iv) the transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

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

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

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Lessee is or shall be a party and the consummation of the transactions herein and therein contemplated will not violate any provision of law, any order of any court or agency of government, or the articles of organization or operating agreement of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

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

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee and the Sublessee through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project.

(f) Subject to Sections 4.2 and 5.1 hereof, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(g) The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of the Sublessee or any other occupant or user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or the Sublessee or any other occupant or user of the Facility located within the State (but outside of the City).

(h) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used

in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

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

(j) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(k) This Agreement and the other Project Documents constitute the legal, valid and binding obligations of the Lessee and enforceable against the Lessee in accordance with their respective terms.

(l) The Lessee and the Sublessee are in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(m) The Mortgage Notes evidence the obligation of the Lessee to repay the Loans made by the First Mortgagee and the Second Mortgagee to the Lessee pursuant to the respective Loans for purposes of financing a portion of the cost of the Project.

(n) The Project Cost Budget attached as Exhibit B to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that the total estimated cost of the Project is \$5,700,000 of which it is anticipated that approximately \$4,860,000 will be provided from the Loans and the balance of which shall be provided from equity on the part of the Lessee and/or the Sublessee. The Lessee has no reason to believe that funds or financing sufficient to complete the Project will not be obtainable.

(o) The amounts provided to the Lessee pursuant to the Loans, together with other moneys available to the Lessee and/or the Sublessee are sufficient to pay all costs in connection with the completion of the Project.

(p) Except as permitted by Section 9.3 hereof, no Person other than the Lessee and/or the Sublessee is or will be in use, occupancy or possession of any portion of the Facility.

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

(r) The aggregate rentable square footage of the Improvements constituting part of the Facility is approximately 21,600 rentable square feet.

(s) The aggregate square footage of the Land is approximately 18,750 square feet.

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

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

(v) All of the Land comprises one whole tax lot and no portion of any single tax lot.

(w) Except as set forth in Schedule F attached hereto, none of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(ii) has been convicted of a misdemeanor and/or found in violation of any administrative, statutory, or regulatory provision in the past five (5) years;

(iii) has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

(iv) has any felony, misdemeanor and/or administrative charges currently pending;

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(vi) has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1 The Company Lease. Pursuant to the Company Lease, the Lessee has leased to the Agency the Land, and all rights or interests therein or appertaining thereto, together with all Improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) a valid leasehold interest in all Improvements intended to be incorporated or installed in the Facility Realty as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest a valid leasehold interest in such Improvements in the Agency and to protect such leasehold interest and title claims against claims of any third parties.

Section 2.2 The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for purposes of undertaking the Project, including, without limitation, (i) constructing and installing the Improvements on the Land, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in the improvement of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and the Loans, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally represents, warrants, covenants and agrees that it will complete the Project, or cause the Project to be completed, by the Completion Date, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); **provided, however,** the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned). In undertaking the Project, the Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) the Loans, and (ii) equity furnished by the Lessee and/or the Sublessee to the extent such funds shall be necessary to cover costs of the Project that exceed such other sources of funds. In the event moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor

from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

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

(c) The Lessee unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Promptly upon completion of the Project, the Lessee will obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) Upon completion of the Project, the Lessee shall evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Schedule A attached hereto, together with all attachments required thereunder.

Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

In the event that the aggregate costs of the Project upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project cost), on request of the Agency, the Lessee shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy, and that the scope of the Project as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

Section 2.3 Leasehold Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a leasehold title insurance policy in an amount not less than \$500,000 insuring the Agency's leasehold interest under the Company Lease in each of the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of each of the Land and the Improvements certified to the Lessee, the title company issuing such title insurance policy and the Agency. Any proceeds of such leasehold title insurance shall be paid to the Lessee and

applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's leasehold interest shall be applied to the payment of any Rental Payments due hereunder; and any balance thereafter may be used by the Lessee for its authorized purpose.

Section 2.4 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency, it being the intent of the parties hereto that no operating expenses of the Lessee and no purchases of other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by 128 44th Realty Holding LLC, a New York limited liability company [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent being the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the business as a fabricator and erector of structural steel for commercial, industrial, and larger residential buildings in the New York metropolitan area, (the "Project"). The [purchase, lease, rental, use] of the [materials, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [insert name and address of vendor (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the

Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the Benefits (as defined in Section 8.5 hereof) that the Agency can confer, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) On the Commencement Date, the Agency shall make the Sales Tax Letter available to the Lessee. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the Completion Date, (3) the completion of the Project as provided in Section 2.2 hereof, or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

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

- A. shall not be available for any items of personalty or payment of any costs other than the costs of the Exempt Property.
- B. shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for use only by the Lessee and the Sublessee at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Lessee or the Sublessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee and the Sublessee at the Facility Realty,
- C. shall not be available for any date after the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(iii) hereof, provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,
- D. shall not be available for or with respect to any item of rolling stock or water craft, or tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee or the Sublessee at the Facility,
- E. shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Tax absent the involvement by the Agency,
- F. shall not be available for any cost of utilities; cleaning service or supplies,
- G. shall not be available subsequent to the termination of this Agreement or of the Agency's interest in the Facility, and
- H. shall only be available for those costs set forth in the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4 (c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and require all appropriate officers

and employees of the Lessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs for which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter, and upon the termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement (Form ST-340 attached hereto as Exhibit D or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency that is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) The Lessee agrees to submit to the Agency on August 1 of each year, commencing August 1, 2008, a completed Employment and Benefits Report in the form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on the June 30 immediately preceding such August 1.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby subleases the Facility Realty to the Lessee, and the Lessee hereby subleases the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Lessee of the Facility as the same is acquired, constructed and improved shall take no further act or deed by the parties hereto).

(b) The Lessee hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Facility will be an Approved Facility and a "project" within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act. The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at 11:58 p.m. (New York City time) on the Expiration Date, or upon such earlier date as this Agreement may be terminated by the Agency or the Lessee as hereinafter provided.

Section 3.3 Rental Provisions. (a) Base Rent. The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) Additional Rent. Throughout the term of this Agreement, the Lessee shall pay to the Agency (except as otherwise provided in Section 4.3 hereof) any additional amounts required to be paid by the Lessee 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 Lessee 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 Lessee 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 Rental Payments Payable Absolutely Net. The obligation of the Lessee to pay Rental Payments provided for in this Agreement shall be absolutely net to the

Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.5 Nature of Lessee's Obligation Unconditional. The Lessee's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 3.6 Assignment of Sublease Agreement. In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom (except for those rentals payable under Section 5(d) of the Sublease Agreement), and the right to enforce all of the Lessee's rights and remedies thereunder.

The Lessee agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Lessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under the Sublease Agreement, or under or by reason of this assignment.

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Sublessee at the Facility shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies having jurisdiction thereof. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility, and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the privilege of making such alterations of or additions to the Facility Realty or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that

(i) as a result of such alterations or additions, the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements,

(iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, and

(iv) such additions or alterations do not change the nature of the Facility so that it would not constitute an Approved Facility and a "project" within the meaning of the Act.

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to the Company Lease, this Agreement and the Sublease Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey a leasehold interest to such property to the Agency and to subject such property to the Company

Lease, this Agreement and the Sublease Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**") without subjecting such Lessee's Property to the Company Lease, this Agreement and the Sublease Agreement. The Lessee's Property shall not constitute part of the Facility subleased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee 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 Lessee's Property, without the consent of or notice to the Agency.

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

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

Section 4.2 Removal of Property of the Facility. (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty (the "**Existing Facility Property**") and thereby removing such Existing Facility Property from the leasehold estate of the Company Lease, this Agreement and the Sublease Agreement, **provided, however**, such Existing Facility Property is substituted or replaced by property (t) having equal or greater fair market value, operating efficiency and utility and (u) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, and no such removal shall be effected if (v) such removal is to another location other than the Facility, (w) such removal would change the nature of the Facility as an Approved Facility and a "project" within the meaning of the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency a leasehold estate in any property installed or

placed upon the Facility pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to the Company Lease, this Agreement and the Sublease Agreement, and within thirty (30) days after receipt of written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to the Company Lease, this Agreement and the Sublease Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

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

(d) Within 120 days after the close of each Fiscal Year of the Lessee during which (i) action was taken by the Lessee pursuant to Section 4.1(b) hereof or action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee, during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) no action was taken by the Lessee pursuant to Section 4.1(b) or no action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition and renovation of an industrial facility, consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area. The Facility is located at 128 44th Street, Brooklyn, New York, being Section 3, Block 735 and Lot 50.

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

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

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

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty in accordance with the provisions of Section 4.3(g) hereof, as follows: (i) in the amounts as determined in subsection (j) below during the QEZE Period, and thereafter (ii) with respect to the Land, in the amounts determined pursuant to subsection (d) below, and with respect to the Improvements, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsections (e) and (f) below.

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Department of Finance, Assessors' Office of the City, the City Surveyor, or any other relevant official of the City fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of the City or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

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

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

Subject to the provisions of subsection (j) below, for the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold interest in the Facility Realty, or (iii) the Termination Date, the Lessee shall make no payments in lieu of real estate taxes, with respect to the Land (subject to Section 4.3(i)) except as follows with respect to the below-stated Tax Fiscal Years: for July 1, 2029 to June 30, 2030, a payment equal to 20% of Full Land Taxes (as defined below) for that year; for July 1, 2030 to June 30, 2031, a payment equal to 40% of Full Land Taxes for that year; for July 1, 2031 to June 30, 2032, a payment equal to 60% of Full Land Taxes for that year; and for July 1, 2032 to June 30, 2033, a payment equal to 80% of Full Land Taxes for that year.

Certain terms used in the above formula are defined below:

"PILOT Commencement Date" shall mean July 1, 2008.

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

“**Full Land Taxes**” shall mean that amount of taxes with respect to the Land as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land and the Agency had no leasehold or other interest in the Land.

For the period commencing on the Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

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

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

Subject to the provisions of subsection (j) below, for the period commencing on the PILOT Commencement Date and ending on the earliest of the following dates to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- A. from the PILOT Commencement Date through June 30, 2029, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2029, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2029- June 30, 2030	STRET + [(CRET less STRET) x 0.2]
July 1, 2030- June 30, 2031	STRET + [(CRET less STRET) x 0.4]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.6]
July 1, 2032- June 30, 2033	STRET + [(CRET less STRET) x 0.8]

provided, however, with respect to this subsection “B,” if for any City Tax Fiscal Year CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall be an amount equal to CRET.

Certain terms used in this Section 4.3 with respect to the Improvements shall be defined as follows:

CRET or "Current Real Estate Taxes" shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements, *and*
- (II) the City's then-current real estate tax rate;

provided, however, that as defined herein, CRET shall not take into account, or in any way be reduced by, any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

STRET or "Stabilized Real Estate Taxes" shall mean the CRET applicable on the Commencement Date.

ICIP or the "Industrial and Commercial Incentive Program" is the program, including any successor program, administered by the New York City Department of Finance (or successor agency) for the exemption from New York City real property taxes of eligible industrial or commercial improvements to real property.

ICIP Exemption shall mean the exemption, from New York City real property taxes, of assessed valuation of industrial or commercial improvements that are eligible under ICIP.

ICIP Abatement shall mean the abatement of New York City real property taxes with respect to eligible industrial or commercial improvements under ICIP.

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

(f) *Subsequent Alterations and Improvements:*

If, at any time after the Operations Commencement Date (as such term is defined in Section 8.5(ii) hereof), the Lessee shall make any alterations of or additions to the Improvements ("**Additional Improvements**"), the Lessee shall: (i) notify an Authorized Representative of the Agency of such Additional Improvements by (y) delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (z) providing requested information about such Additional Improvements on the Employment and Benefits Report (see Schedule B attached hereto); and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

- A. the increase in the assessed value of the Improvements as first assessed upon completion of the Additional Improvements and which are attributable to such Additional Improvements, *less* (except during the QEZE Period) such portion of that incremental assessed value that may be exempt by operation of an ICIP Exemption (if any), *and*
- B. the City's real property tax rate prevailing at the time of such first assessment.

The product of "A" and "B" immediately hereinabove shall be added to STRET and the resulting sum shall be deemed the new STRET for purposes of subsection (e) of this Section 4.3; *provided, however*, that if a reduction in the incremental assessed value corresponding to an ICIP Exemption is applicable, then, as the amount of that reduction diminishes over time (in accordance with the schedule of the applicable ICIP Exemption), the new STRET will correspondingly increase. In no event shall the new STRET in any way take into account or be reduced by any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

(g) *General Payment Provisions:*

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

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

If the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same to the PILOT Depository together with the lesser of (x) the maximum amount of interest thereon permitted by law and (y) the greater of (i) interest thereon at the same rate per annum from time to time and compounded at the same frequency as if such amounts were delinquent taxes and (ii) a late payment fee of 5% of the amount that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month on an amount equal to the original amount that was not paid when due that remains unpaid during such month or part thereof.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain

exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date the Agency shall no longer have a leasehold estate in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such cessation of the Agency's leasehold estate occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such cessation.

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

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

The Lessee understands and agrees that the Lessee is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, utilized or occupied by any Person (other than the Lessee or the Sublessee but including any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization and/or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessee or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

Commencing as of the date on which the Facility Realty is not used in accordance with the Act and/or this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty.

Whenever in this Section 4.3 the Lessee is required to make additional payments in lieu of real estate taxes as if the Facility Realty were owned by the Lessee and the Agency had

no leasehold estate in the Facility Realty or specified portions thereof, the applicable tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *QEZE Tax Credits:*

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) June 30, 2012 (date is equivalent to end of QEZE tax benefits), or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty (the "QEZE Period"), the Lessee shall make payments in lieu of real estate taxes equal to, for any given City Tax Fiscal Year, "Eligible Real Property Taxes", as described under subdivision (e) of section 15 of the New York Tax Law. From July 1, 2012 until the Expiration Date, the Lessee shall make payments in lieu of real estate taxes in accordance with subsections (d), (e) and (f) of this Section 4.3. Notwithstanding clause (ii) above, in the event that the Lessee is no longer qualified or certified to be eligible for QEZE tax benefits prior to June 30, 2012, the Agency, in its sole discretion, and in furtherance of the purposes of the Act, may determine that the Lessee shall make payments in lieu of real estate taxes in accordance with subsections (d), (e) and (f) of this Section 4.3 on a date, as determined by the Agency, prior to July 1, 2012.

In the event that the State, at any time during the QEZE Period, repeals the Empire Zones Program, as established under Article 18-B of the New York General Municipal Law, or that part of it providing for the "QEZE Credit for Real Property Taxes", as defined under Section 15 of the New York Tax Law, and as a result of such repeal the Lessee is no longer eligible to claim the QEZE Credit for Real Property Taxes as it is available under current law, the Lessee shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections (d), (e) and (f); *provided, however*, that if the Lessee learns, after it has tendered a payment pursuant to this subsection (j), that as a result of such repeal it is no longer eligible to claim the QEZE Credit for Real Property Taxes with respect to such payment, the Lessee shall be entitled to a reduction in an amount equal to the excess of such payment over the amount the Lessee would otherwise have paid pursuant to subsections (d), (e), and (f) above, to be applied to its next payment to be made pursuant to this Section 4.3; *provided further, however*, that for any period during which the Lessee receives QEZE Credit for Real Property Taxes, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections (d), (e) and (f), shall apply.

(k) *Survival of Obligations:*

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

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, the Sublease Agreement, any ownership estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder

or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions**". The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's leasehold estate in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty and the Agency had no leasehold estate in the Facility Realty.

Section 4.5 Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, with insurance companies admitted, authorized and licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee and the Sublessee. In addition to this general requirement, such insurance shall, for purposes of subsection (b) through (g) of this Section 4.5, include, without limitation (hereinafter "**Specific Coverage**"):

(i) During any period of construction, renovation, improvement or reconstruction of any portion of the Facility Realty, to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee, the Sublessee 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 Lessee and the Sublessee as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility 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 Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or deductible amount;

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

(iv) Automobile liability insurance, to the extent not covered by General Liability insurance, in the amount of \$5,000,000 covering the Lessee and/or the Sublessee, as applicable, for all owned, non-owned and/or hired automobiles, forklifts and other drivable machinery and/or vehicles used in connection with the Facility; and

(v) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

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

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

(i) designate the Lessee, the Sublessee and the Agency as additional insureds as their respective interests may appear;

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

(iii) 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 Lessee or the Sublessee or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

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

(v) 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, or ten (10) days if due to nonpayment of premium, after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

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

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

(e) The Lessee shall deliver or cause to be delivered to the Agency the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the Commencement Date: (A) a broker's certificate of coverage confirming that the Lessee, as of the Commencement Date, has obtained Specific Coverage in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any Specific Coverage required by this Section 4.5 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE FACILITY OR THE BUSINESS, OPERATIONS, FINANCIAL CONDITION OR INTEREST OF THE LESSEE OR THE SUBLESSEE.

(h) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgages with respect to property insurance or the application of proceeds thereof and said Mortgages shall control the use of proceeds of property insurance. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance.

Section 4.6 Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be

obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with Legal Requirements. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

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

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation. (a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event")

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

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

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

(b) In the event a Loss Event shall occur, the Lessee shall

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

(ii) exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 5.1(b).

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

(i) automatically be deemed a part of the Facility and shall be subject to the Company Lease, this Agreement and the Sublease Agreement,

(ii) be effected only if the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding,

replacement, repair or restoration shall not change the nature of the Facility as an Approved Facility and a qualified "project" as defined in the Act,

(iii) be effected only if the Lessee shall deliver to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency where the cost of rebuilding, replacements, repairs or restorations of the Facility will exceed \$250,000, and

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

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Agency, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has a good and valid leasehold interest in all property constituting part of the Facility and all property of the Facility is subject to the Company Lease, this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights against third parties by the Lessee or the Sublessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

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

(f) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation

renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

(g) The Lessee shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property subject to the provisions of the Mortgages.

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

(i) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgages with respect to property insurance proceeds and condemnation awards, which Mortgages shall control the use of property insurance proceeds and condemnation awards.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) the Lessee is not the surviving, resulting or transferee entity and (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State and (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer and (4) delivers to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency, provided that if any modification to such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement.

The Lessee further represents, covenants and agrees that the Lessee is and throughout the term of this Agreement will continue to be an Affiliate of the Sublessee and will deliver to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency, provided that if any modification to such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement.

Section 6.2 Indemnity. (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Agency's control or supervision, and the PILOT Depository (collectively, the "**Indemnified Parties**") and each an

"Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, **"Claims"**) of any kind for losses, damage, injury and liability (collectively, **"Liability"**) of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from June 12, 2007, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility or the Project,
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Lessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,
- (v) any injury to any Person or the personal property of any Person in or on the premises of, the Facility, including, but not limited to, any injury for which Specific Coverage under Section 4.5(a) above applies to the Lessee and/or an Affiliate, but not to the Agency,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of the City's zoning resolution and related regulations,
- (vii) any damage or injury to the person or property of (A) the Lessee, (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee, or (C) any other Person who may be in or about the premises of the Facility,
- (viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as defined in Section 6.2(d) below) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or

threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

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

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

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its Affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof, including any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, 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 Lessee under this Section 6.2.

(c) (i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and (B) except as set forth in a certain Phase I Environmental Site Assessment Report, dated May 15, 2007, prepared by Geographic Services, Inc. (the "Audit"), a true and correct copy of which the Lessee has delivered to the Agency, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements. On or before the Commencement Date, the Lessee shall provide to the Agency a letter (the "Phase I Reliance Letter") from the Environmental Auditor addressed to the Agency, stating that the Agency may rely upon the Audit as if it was prepared for the Agency in the first instance.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause

or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

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

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

(v) In the event any mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

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

(d) For purposes of this Section 6.2, the term "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the general liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period

stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

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

On the Commencement Date, the Lessee shall pay to the Agency its fee of \$71,200.00 (said amount representing the \$72,900.00 financing fee, plus an annual administrative fee of \$800.00, less an application fee of \$2,500.00), payment of which has been received on the Commencement Date. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$800.00 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2006) payable on each anniversary of the Commencement Date until the termination of this Agreement.

Section 6.4 Retention of Title to or of Interest in Facility; Grant of Easements; Release of Facility. (a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold estate in the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the other and any purported disposition without such consent shall be void.

Notwithstanding the foregoing paragraph, the Lessee may, upon prior written notice to the Agency, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement as shall be necessary or convenient in the opinion of the Lessee for the operation or use of the Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from the leasehold estate of the Company Lease, of this Agreement and of the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements is situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty from the leasehold

estates of the Company Lease, of this Agreement and of the Sublease Agreement, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the liens of the Company Lease, of this Agreement and of the Sublease Agreement); and (v) any liens for taxes or assessments not then delinquent; **provided, however**, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Facility Realty so proposed to be released and the release of such portion of the Facility Realty is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

(b) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Lessee under this Agreement or any other Project Document to which it shall be a party.

Section 6.5 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company Lease, under this Agreement or under the Sublease Agreement or the interest of the Agency, the Lessee or the Sublessee under the Company Lease, under this Agreement or under the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease, in this Agreement or in the Sublease Agreement, of the Agency, the Lessee or the Sublessee or against any of the Rental Payments payable under the Company

Lease, under this Agreement or under the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Sublessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

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 the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the title insurance policy referred to in Section 2.3 hereof), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee under this Agreement, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.7 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE, ON BEHALF OF ITSELF AND THE SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.8 Financial Statements; No-Default Certificates. (a) Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency, a copy of the most recent annual audited financial statements of the Lessee and of the Sublessee and of their subsidiaries, if any (including balance sheets as of the end of such fiscal year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles consistently applied, certified by an independent certified public accountant reasonably acceptable to the Agency.

(b) Upon request of the Agency, the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee (i) as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Lessee was in compliance with all the provisions that relate to the Lessee in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto; and (ii) that the insurance the Lessee maintained complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

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

Section 6.9 Employment Information, Opportunities and Guidelines.

(a) Annually, by August 1 of each year, commencing August 1, 2008, until the termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule B attached hereto, certified as to accuracy by the chief financial or accounting officer of the Lessee and the Sublessee. Upon termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency an employment report relating to the period commencing the date of the last report submitted to the Agency and ending on the last payroll date of the preceding month in substantially the form of Schedule B attached hereto, certified as to accuracy by the Lessee and the Sublessee. Nothing herein shall be construed as requiring the Lessee or the Sublessee to maintain a minimum number of employees on its respective payroll.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates (including the Sublessee) with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (P.L. No. 105-220) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where

practicable, to consider first, and cause each of its Affiliates (including the Sublessee) at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee (on behalf of itself and the Sublessee) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the New York City Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessee which is pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or by the Sublessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

Section 6.10 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 6.11 Recording and Filing. This Agreement shall be recorded by the Lessee in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 6.12 Further Encumbrances. The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee or of the Sublessee in the Facility or the

Company Lease, this Agreement or the Sublease Agreement, except for Permitted Encumbrances.

Section 6.13 Subtenant Survey. The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2008, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form attached hereto as Schedule C.

Section 6.14 Signage at Project Site. Upon commencement of renovations and/or construction of the improvements at the Facility (including but not limited to the commencement of any demolition and/or excavation); with any proceeds of the Bonds, the Lessee shall erect on the Facility, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the "Sign"):

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THROUGH THE
NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY
Mayor Michael Bloomberg**

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Agency in writing or electronically; and (ii) the minimum size of the sign shall be four feet by eight feet; and (iii) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at such Facility until completion of the renovations and/or construction. The Lessee may erect other signs in addition to the Sign.

Section 6.15 Certain Continuing Representations. If at any time during the term of this Agreement, the representation or warranty made by the Lessee pursuant to Section 1.5(w) hereof would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Institution shall be deemed to be in default under this Agreement unless the Agency shall, upon written request by the Institution, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

(a) Failure of the Lessee to pay any Rental Payment within fifteen (15) days of the due date thereof;

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency; or

(ii) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.5 hereof and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee, the Sublessee, the Corporate Guarantor

or either of the Individual Guarantors or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof, Section 7 of the Sublease Agreement or Section 2.6 of the Guaranty Agreement;

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

(g) The commencement of proceedings to foreclose any mortgage lien on or security interest in the Facility;

(h) Any loss of leasehold estate of the Agency in the Facility;

(i) An "Event of Default" under the Sublease Agreement, the Guaranty Agreement or any other Permitted Encumbrances, including the Mortgages or the Mortgage Notes, shall occur and be continuing; and

(j) An appointment of a receiver with respect to the Facility as may be specified in the Mortgages.

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 Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and the Lessee hereby waives delivery and acceptance of such termination agreements as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination agreements; or

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

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

(d) The Agency may require the Lessee to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount that the Lessee would otherwise be required to pay if it were the owner of the Facility Realty and the Agency had no leasehold interest in the Facility Realty; or

(e) 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 Lessee under this Agreement.

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 Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay taxes as if it were the record owner of the Facility Realty), 6.2, 7.6, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

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

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

thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

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

ARTICLE VIII

OPTIONS TO TERMINATE; RECAPTURE OF BENEFITS

Section 8.1 Option to Terminate Agreement. (a) The Lessee shall have the option to terminate the Company Lease and this Agreement by paying all Rental Payments and any other amounts due and payable under this Agreement (collectively, the "Project Payments"). The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such termination is to be effective (which date shall not be earlier than forty-five (45) days after the date of such notice). On a scheduled termination date, the Lessee shall (i) pay any and all Project Payments then due, plus one dollar (\$1.00), (ii) perform all accrued obligations hereunder, (iii) surrender the Sales Tax Letter to the Agency for cancellation, if applicable, and (iv) deliver or cause to be delivered to the Agency (x) with respect to any mortgage on the Facility for which the Agency shall have granted a mortgage recording tax exemption, an executed satisfaction of such mortgage in recordable form, executed by the mortgagee, and (y) with respect to any mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement but with respect to which mortgage the Agency shall not have granted any mortgage recording tax exemption, a release of the Agency from such mortgage in recordable form executed by all other parties to such mortgage. Such termination shall become effective on such scheduled termination date, subject, however, to the survival of the obligations of the Lessee under Sections 4.3, 6.2, 8.5, 9.13 and 9.15 hereof.

(b) Upon termination of the Company Lease and this Agreement, the Agency, upon the written request and at the sole cost and expense of the Lessee, shall execute such instruments as the Lessee may reasonably request or as may be necessary to discharge this Agreement and the Company Lease as documents of record with respect to the Facility Realty, subject to Section 8.2 hereof.

Section 8.2 Release of Interest in Facility upon Exercise of Option to Terminate. At the closing of terminating the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) termination agreements and all other necessary documents confirming the release of the Agency's right, title and interest in and to the Facility Realty and terminating the Company Lease and this Agreement; and (ii) all necessary documents releasing all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon release of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility and, by reason thereof, the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3 [Reserved].

Section 8.4 Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the Expiration Date, and upon receipt of sixty (60) days prior written notice of the Agency requesting termination, the Lessee shall terminate the Company Lease and this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee shall terminate the Company Lease and this Agreement in accordance with Sections 8.1 and 8.2 hereof, and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility Realty and, by reason thereof, the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof. In the event the Lessee does not terminate the Company Lease and this Agreement within such sixty (60) day period, then, commencing on the 61st day after transmittal of the notice requesting termination as above provided, the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have terminated the Company Lease and this Agreement in accordance with the provisions hereof.

Section 8.5 Recapture of Public Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) If there shall occur a Recapture Event during the Recapture Period (as those terms are defined below), but such Recapture Event is prior to the Operations Commencement Date (defined hereinbelow), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits (as defined below); and (ii) interest described in subsection (ii)(c) and (if applicable) (d) immediately below.

(ii) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the date on which the Project shall have been substantially completed (which shall be the earlier of (y) the completion date set forth in Section 2.2 hereof, or (z) the date stated in the certificate of an Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof)(such earlier date to be referred to as the "**Operations Commencement Date**"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

- a. If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.
- b. If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits (where "X" is a percent equal to 100% less Y, and where "Y" equals the product of

1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

- c. The principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date of the Agency's demand; such that (x) Benefit principal comprising mortgage recording taxes, and filing and recording fees, shall be deemed to have accrued to the Lessee on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax savings shall be deemed to have accrued to the Lessee on each date upon which such sales and/or use tax saving shall have been exempted by reason of the use by the Lessee of the Sales Tax Letter, provided, however, that if the Lessee cannot establish to the Agency's satisfaction the applicable date of receipt, the Agency shall deem the date of receipt (and therefore the date on which the Benefit principal accrued) to be the first day of the calendar year for which exemption was reported by the Lessee to the State Department of Taxation and Finance on Form ST-340, or, if the Lessee shall have failed to file Form ST-340, the Commencement Date.
- d. In addition to the interest payable pursuant to "c" preceding, the principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, and whether related to real estate tax savings or not, if not paid to the Agency upon demand, shall from the date of demand bear interest calculated at the rate and compounded in the same manner as the interest imposed by the City's Department of Finance on the delinquent payments of real estate taxes; *provided, however*, that the effective rate of such interest shall not exceed the maximum interest permitted by law.
- e. For purposes of this subsection (ii) and subsection (i) of this Section 8.5, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) business days from the date of the notice.

With respect to subsection (ii)(c) immediately hereinabove, the "statutory judgment rate" shall be the statutory judgment rate in effect on the date of the Agency's demand; and with respect to subsection (ii)(d) immediately hereinabove, the interest rate and compounding "imposed by the

City's Department of Finance on delinquent payments of real estate taxes" shall be the rate and the compounding in effect on the date of the Agency's demand.

The term "**Benefits**" shall mean, collectively:

(y) all real estate tax benefits that have accrued to the benefit of the Lessee during such time as the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments that the Lessee would have paid during the term of this Agreement had the Agency not had a leasehold or controlling interest in the Facility Realty during such term; and

(z) all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, any exemption from any applicable mortgage recording taxes, sales or use taxes, and filing and recording fees.

The term "**Recapture Period**" shall mean the period of time commencing on the Commencement Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

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

(a) The Lessee or the Sublessee shall have failed to complete the Project by the Project completion date set forth in Section 2.2 hereof.

(b) The Lessee or the Sublessee shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

(c) The Lessee or the Sublessee shall have transferred all or substantially all of its employees to a location outside of the City.

(d) The Lessee or the Sublessee shall have substantially changed the scope and nature of its operations at the Facility Realty.

(e) The Lessee and/or the Sublessee shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(f) The Lessee or the Sublessee shall have subleased all or part of the Facility Realty in violation of Section 9.3 hereof.

(g) The Lessee or the Sublessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; *provided, however, and notwithstanding the foregoing*, such relocation shall not be a Recapture Event (as defined herein) if (i) the Lessee and the Sublessee have relocated their operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City; and (ii) the Lessee and the Sublessee

maintain, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Lessee and the Sublessee at the Facility Realty prior to relocation; and (iii) the Lessee and/or the Sublessee shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Lessee and/or the Sublessee to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under subsection (i) preceding, and the calculation of interest pursuant to subsection (ii)(c) of this Section 8.5 shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Agency deems satisfactory in its sole discretion.

(iii) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

- (A) shall have arisen as a direct, immediate result of (x) *force majeure* as defined in this Agreement, or (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, the Sublessee, or any Affiliate, or
- (B) is deemed, in the sole discretion of the Agency, to be (y) minor in nature, or (z) a cause of undue hardship to the Lessee and/or the Sublessee were the Agency to recapture any Benefits.

(iv) The Lessee covenants and agrees to furnish the Agency with written notification of any Recapture Event within ten (10) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

(v) The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

ARTICLE IX

MISCELLANEOUS

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

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

Section 9.2 Priority. Pursuant to the First Mortgage, the Agency and the Lessee will grant to the First Mortgagee a mortgage lien on and a security interest in the Facility as security for the payment of amounts due under the First Mortgage Note. Upon the satisfaction in full of the Bridge Loan Mortgage from the proceeds of the Second Mortgage Loan, the Lessee will grant to the Second Mortgagee a second mortgage lien on and a security interest in the Facility pursuant to the Second Mortgage as security for the payment of amounts due under the Second Mortgage Note. The Company Lease, this Agreement and the Sublease Agreement shall be subject and subordinate to the Mortgages and to such mortgage liens and security interests so created thereby; provided, however, that nothing in the Mortgages shall impair the Agency's ability to enforce its rights hereunder against the Lessee.

Section 9.3 Assignment or Sublease. (a) The Lessee shall not at any time (y) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except to the Sublessee pursuant to the Sublease Agreement, without the prior written consent of the Agency (such consent to take into consideration the Agency's policies as in effect from time to time), and provided that:

(i) the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the sublease shall not cause the Facility to cease being an Approved Facility and a "project" under the Act;

(ii) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder 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;

(iii) any assignee or transferee of the Lessee or any sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee 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;

(iv) any assignee, transferee or sublessee shall utilize the Facility as an Approved Facility and a qualified "project" within the meaning of the Act;

(v) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years at any given date, and no more than an aggregate of twenty percent (20%) of the Facility Realty would be subleased by the Lessee or Sublessee;

(vii) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any Guarantor under the Guaranty Agreement;

(viii) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease;

(ix) any such assignee, transferee or sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement; and

(x) each such sublease shall contain such other provisions as the Agency may reasonably require.

The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) Any consent by the Agency to any act of assignment, transfer or sublease 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 Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the Sublessee, any sublessee or occupant during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld conditioned or delayed), amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any sublease entered into in accordance with this Section.

(e) The limitations in this Section 9.3 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and sub-subletting in whole or in part of the Facility.

(f) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency.

Section 9.4 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto; provided, however, that no amendment pertaining directly or indirectly to the rights, powers or privileges of the Mortgagees shall be effective without the consent of the Mortgagees.

Section 9.5 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, and

(b) if to the Lessee, to 128 44th Realty Holding LLC, c/o Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York 11232, Attention: President, with a copy to Caruso, Caruso & Banda PC, 7302 13th Avenue, Brooklyn, New York 11228, Attention: Mark Caruso, Esq.

The Agency and the Lessee 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 (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

The Lessee shall deliver to the Agency on August 1 of each year, commencing August 1, 2008, a completed location and contact information report in the form attached hereto as Schedule D.

Any notice, demand or report required to be given hereunder by the Agency or the Lessee shall also be delivered, at the same time and in the same manner as such notice, demand or report is required to be given to the Agency or the Lessee hereunder, to the Sublessee.

The Agency shall deliver to each Mortgagee a copy of any notice of default or notice of its intent to convey its leasehold interest in the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be delivered at the same time and in the same manner as such notice is required to be given to the Lessee, addressed as follows:

To the First Mortgagee, to SI Bank & Trust (Sovereign Bank), 1535 Richmond Avenue, Staten Island, New York, 10314, Attention: Commercial Mortgage Loans, with a copy to: Cullen and Dykman, LLP, 44 Wall Street, 19th Floor, New York, New York 10005, Attention: Patricia E. Russo, Esq., and to the Second Mortgagee, to Empire State Certified Development Corporation, 633 Third Avenue, 36th Floor, New York, New York 10036, Attention: Chet Sadowski, with a copy to Certilman, Balin, Adler & Hyman LLP, 90 Merrick Avenue, East Meadow, New York 11554, Attention: Michael O'Shea, Esq.

Section 9.6 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 Lessee relating to the Facility, other than the Company Lease.

Section 9.7 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.8 Inspection of Facility. The Lessee will permit the Agency, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of (y) assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as an Approved Facility and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.9 Effective Date; Counterparts. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts; each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Lessee and their respective successors and assigns.

Section 9.11 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

Section 9.12 Law Governing. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.**

Section 9.13 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

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

Section 9.14 Non-Discrimination. (a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit the Sublessee to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without

regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

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

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


Section 9.15 Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

Section 9.16 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Commencement Date.

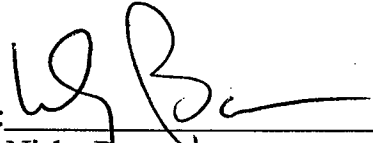
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IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**


By: _____
Maureen P. Babis
Executive Director

128 44TH REALTY HOLDING LLC


By: _____
Nicky Barone
Member

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

On the 28 day of August, in the year two thousand seven, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public/Commissioner of Deeds

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, ____

STATE OF NEW YORK

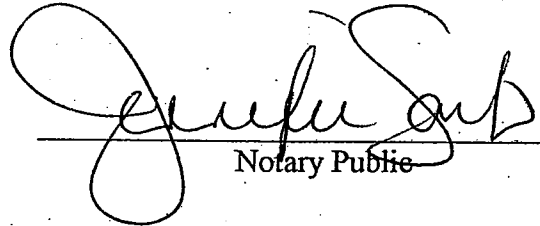
)

: ss.:

COUNTY OF NEW YORK

)

On the 29th day of August, in the year two thousand seven, before me, the undersigned, personally appeared Nicky Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2015

APPENDICES

EXHIBIT A

Description of the Land

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

Exhibit B

PROJECT COST BUDGET

	<u>Loan</u>	<u>Funds of Lessee and/or Sublessee</u>	<u>Total</u>
Land and Building Acquisition	\$4,860,000	\$540,000	\$5,400,000
New Construction	0	200,000	200,000
Fees/Other Soft Costs	<u>0</u>	<u>100,000</u>	<u>100,000</u>
Total	\$4,860,000	\$740,000	\$5,700,000

Exhibit C

[FORM OF SALES TAX LETTER]

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

EXPIRATION DATE: _____ 1, 2008

**ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS;
128 44th Street, Brooklyn, New York**

August __, 2007

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2007 Barone Steel Fabricators, Inc.)

Ladies and Gentlemen:

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

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

2. Pursuant to a resolution adopted by the Agency on July 23, 2007, and a certain Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the Agency and 128 44th Realty Holding LLC, a New York limited liability company (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition and renovation of an industrial facility (the "Facility") consisting of the acquisition of an approximately 18,750 square foot parcel of land and an approximately 21,600 square foot building thereon, and the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the business as a fabricator and erector of structural steel for commercial industrial and larger residential buildings in the New York metropolitan area (the "Project"), for use and occupancy by the Company and its permitted sublessee, Barone Steel Fabricators, Inc., a New York corporation (the "Sublessee").

3. In connection with such resolutions, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the renovation of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations

described in Exhibit A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the renovation of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Exhibit B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Exhibit B.

5. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the renovation of the Project, shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by 128 44th Realty Holding LLC, a New York limited liability company [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent being the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the business as a fabricator and erector of structural steel for commercial, industrial, and larger residential buildings in the New York metropolitan area, (the "Project"). The [purchase, lease, rental, use] of the [materials, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [*insert name and address of vendor* (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company or by any Agent is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the "Termination Date"), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Exhibit B and in the Agency Agreement referred to therein.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for annual renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

10. The Agency further appoints the Sublessee its agent for purposes of using the Facility.

[Intentionally Left Blank]

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Maureen P. Babis
Executive Director

ACCEPTED AND AGREED TO BY:

128 44TH REALTY HOLDING LLC

By: _____
Nicky Barone
President

BARONE STEEL FABRICATORS INC.

By: _____
Name:
President

Exhibit A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements.** With respect capital improvements to the Facility:

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility;

(b) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

(ii) **Personal Property.** None.

(iii) **Services.** With respect the eligible items identified in (i)(a) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

Exhibit B

Form ST-60--Required Procedures

Introduction. Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

Required Procedures. In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* _____ dated _____, 200_ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A [*attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company*].
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Exhibit B).

- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility). If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
 - i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

- ii. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- iii. has been convicted of a felony in the past ten (10) years;
- iv. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- v. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf into the address bar of your internet browser and saving the “fill-in” PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to Compliance@nycedc.com.

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

Addendum A

FORM ST-60

Exhibit D

ST-340 Annual Report of Sales and Use Tax Exemptions

SCHEDULE A

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of 128 44th Realty Holding LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

(ii) except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, service, machinery, equipment, materials and supplies used therefor have been paid for;

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

(iv) the Agency has a good and valid leasehold estate in the Facility, and all property constituting the Facility is subject to the Company Lease, the Lease Agreement and the Sublease Agreement, subject only to Permitted Encumbrances;

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

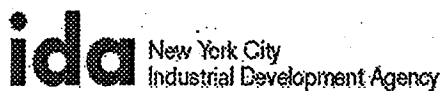
(vi) this Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate; and

(vii) attached hereto are (a) releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project, (b) a certificate of occupancy, (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Lease Agreement, and (d) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 of the Lease Agreement in respect of the Facility have been paid in full.

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

128 44TH REALTY HOLDING LLC

By: _____
Nicky Barone
Member



EMPLOYMENT & BENEFITS REPORT

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than July 15, 20__. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

Please provide your NAICS Code (see http://www.naics.com/search.htm)

If you cannot determine your NAICS Code, please indicate your industry type

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

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20__.

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

If the answer to item 6 above is fewer than 250 employees, please skip questions 9 through 13 and continue with questions 14 through 17.

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

For items 14 through 16, indicate the value of the benefits realized at Project Locations during FY ' __.

- 14. Value of sales and use tax exemption benefits \$
15. Value of Commercial Expansion Program ("CEP") benefits \$
16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$

17a. Were physical improvements made to any Project Location during FY ' __ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Yes No

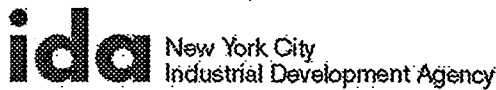
17b. If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s) please provide the ICIP application number(s) #

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

Entity Name: _____

Signature By: _____ Date: _____

Name (print): _____ Title: _____



DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

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

"Company" includes any entity that is a party to a Project Agreement.

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

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

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

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

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

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

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

ITEM INSTRUCTIONS

~~For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement.~~

Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Tenant.

- 1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 20__ and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**
- 5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.
- 6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.
- 9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.
- 10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.
- 14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a 501(c)3 exemption.
- 15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.
- 16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.



New York City
Industrial Development Agency

SCHEDULE C

SUBTENANT OCCUPANCY SURVEY

*Please complete a separate occupancy survey for each project building.

As of December 31, 20__

PROJECT COMPANY: _____ PROJECT LOCATION: _____

Occupant	Name of Occupant's Principal	Square Footage Occupied	Affiliate Relationship to Company, if any	Date Occupancy Began	Date Occupancy Will End
1.					
2.					
3.					
4.					
5.					

1. _____

2. _____

3. _____

4. _____

5. _____

(Please continue on a separate page if necessary)

_____ Check here if no Persons other than the Company occupy, sublease and/or license space at the Project Location

TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: _____ square feet

I, the undersigned, hereby certify that the information reported above is true, correct and complete as of December 31, 20__ and that the occupants listed above are the only occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____ Email: _____

(Please Print CLEARLY)

Please fax the completed request to: NYCIDA Compliance Dept. (212) 618-5738
Or mail to: NYCIDA, Attention: Compliance Dept, 110 William Street, New York, NY 10038

Questions? Please call the NYCIDA Compliance Hotline: (212) 312-3963 or Email: ComplianceReporting@nycedc.com

SCHEDULE D



New York City
Industrial Development Agency

LOCATION & CONTACT INFORMATION

For the Fiscal Year July 1, 20__ – June 30, 20__

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits.

Project Address	Floor	Borough	Zip Code	Type of Benefit <small>(Pilot, Sales Tax, etc.)</small>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

* Please use additional pages if necessary *

Please provide below current Project Contact Information: (Please print CLEARLY)

Project Name: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Signature: _____

Backup Contact Information:

Name: _____ Title: _____ Phone: _____

Please mail to:
 New York City Industrial Development Agency
 Attention: Compliance Department
 110 William Street
 New York, NY 10038

OR FAX YOUR RESPONSE TO: (212) 618-5738
QUESTIONS? Please contact the Compliance Helpline at (212) 312-3963 or email
 ComplianceReporting@nycedc.com

SCHEDULE E

[FORM OF REQUIRED DISCLOSURE STATEMENT]

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 6.1] [Section 9.3] of that certain Lease Agreement, dated as of August 1, 2007 between the Agency and 128 44th Realty Holding LLC, a limited liability company organized and existing under the laws of the State of New York (the "Lease Agreement") THAT:

[if being delivered pursuant to 6.1 of the Lease Agreement] None of the surviving, resulting or transferee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

[if being delivered pursuant to 9.3 of the Lease Agreement] None of the assignee, transferee or sublessee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity:

(1) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

(2) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(3) has been convicted of a felony in the past ten (10) years;

(4) is currently under indictment for a felony criminal offense, or has received formal written notice from a federal, state or local governmental agency or body that it is currently under investigation for a felony criminal offense; or

(5) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, join venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such entity, or person or persons holding equivalent positions.

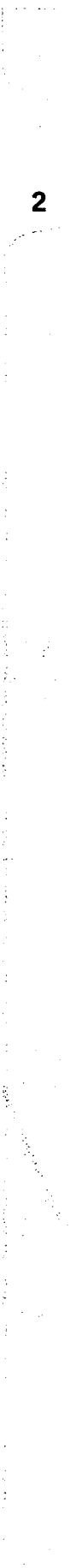
IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 200_.

[NAME OF CERTIFYING ENTITY]

By: _____
Name:
Title:

Exceptions, if any, to Section 1.5 (w) of the Lease Agreement:

NONE



128 44TH REALTY HOLDING LLC

and

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

COMPANY LEASE AGREEMENT

Dated as of August 1, 2007

New York City Industrial Development Agency
2007 Barone Steel Fabricators, Inc. Project

Affecting the Land generally known by the street address
128 44th Street, Brooklyn, New York 11232
Section 3, Block 735 and Lot 50

in the County of Kings,
City and State of New York
as more particularly described in
Exhibit A to this Lease Agreement
on the Official Tax Map of Kings County

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

COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT, made as of August 1, 2007 (this “**Company Lease**”), by and between **128 44TH REALTY HOLDING LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “**Company**”), having its principal office at 128 44th Street, Brooklyn, New York 11232, party of the first part and **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 (the “**Agency**”), duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038, party of the second part (capitalized terms used in this Company Lease and not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company and Barone Steel Fabricators, Inc., a corporation duly organized and existing under the laws of the State of New York (the “**Sublessee**”), for an industrial “project” within the meaning of the Act within the territorial boundaries of the City and located on that certain lot, piece or parcel of land in Section 3, Block 735 and Lot 50, generally known as and by the street address 128 44th Street, Brooklyn, New York (the “**Land**”) and otherwise described in Exhibit A — “Description of Land” — attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Sublessee in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area, (the "Project"); and

WHEREAS, to facilitate the Project, the Agency, the Company and the Sublessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Company will lease the Facility Realty to the Agency pursuant to this Company Lease, (ii) the Agency will sublease its interest in the Facility Realty to the Company pursuant to a certain Lease Agreement, dated as of even date herewith (as the same may be amended or supplemented, the "**Lease Agreement**"), between the Agency and the Company, and (iii) the Company will sub-sublease the Facility Realty to the Sublessee pursuant to a certain Sublease Agreement, dated as of even date herewith, between the Company and the Sublessee (as the same may be amended or supplemented, the "**Sublease Agreement**"); and, in furtherance of such purposes the Agency adopted a resolution on July 23, 2007 (the "**Authorizing Resolution**"), authorizing the undertaking of the Project, the acquisition and renovation of the Facility by the Company, the lease of the Facility Realty by the Company to the Agency, the sublease of the Facility Realty by the Agency to the Company, and the sub-sublease of the Facility Realty by the Company to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Company and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the cost of the Project is being financed in part through (i) a loan in the principal amount of \$2,915,000 to be made by SI Bank and Trust (Sovereign Bank) (the "**First Mortgagee**") to the Company (the "**First Mortgage Loan**"), (ii) a loan in the principal amount of \$1,945,000 to be made by Empire State Certified Development Corporation (the "**Second Mortgagee**") to the Company (the "**Second Mortgage Loan**") and (iii) equity furnished by the Company and/or the Sublessee and/or the proceeds of additional lending; and

WHEREAS, in order to evidence its obligation to repay the First Mortgage Loan, the Company will issue to the First Mortgagee a certain mortgage note (the "**First Mortgage Note**"), dated the Commencement Date, in the principal amount of the First Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Company to the First Mortgagee under the First Mortgage Note, the Company and the Agency will grant a first mortgage on the Facility to the First Mortgagee, subject to permitted encumbrances thereon,

pursuant to a certain mortgage and security agreement, dated the Commencement Date (as the same may be amended or supplemented, the "**First Mortgage**"), from the Company and the Agency to the First Mortgagee; and

WHEREAS, in order to evidence its obligation to repay the Second Mortgage Loan, the Company will issue to the Second Mortgagee a certain mortgage note, to be entered into at a future date (the "**Second Mortgage Note**"), in the principal amount of the Second Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Company to the Second Mortgagee under the Second Mortgage Note, the Company will grant a second mortgage on the Facility to the Second Mortgagee, subject to permitted encumbrances thereon, pursuant to a mortgage and security agreement, to be entered into at a future date (as the same may be amended or supplemented, the "**Second Mortgage**"), from the Company and the Agency to the Second Mortgagee; and

WHEREAS, the proceeds of the Second Mortgage Loan will not be available to the Company on the Commencement Date; and

WHEREAS, in order to provide bridge financing for a portion of the anticipated proceeds of the Second Mortgage Loan, the First Mortgagee has agreed to make an advance to the Company in the amount of \$1,945,000 on the Commencement Date (the "**Bridge Loan**"); and

WHEREAS, the Bridge Loan is to be evidenced by a certain mortgage note, (the "**Bridge Loan Mortgage Note**"), and secured by a certain mortgage and security agreement dated the Commencement Date, (as the same may be amended or supplemented, the "**Bridge Loan Mortgage**"), from the Agency and the Company to the First Mortgagee; and

WHEREAS, the Second Mortgage Loan will be made for the benefit of the Company, and the Company and Sublessee will pay to the First Mortgagee from the proceeds of the Second Mortgage Loan all amounts owing under the Bridge Loan, and the Bridge Loan Mortgage will be satisfied in full; and

WHEREAS, pursuant to this Company Lease, the Company will lease the Facility Realty to the Agency;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be payable by the

Agency solely out of the lease rentals, revenues and receipts payable by the Company under the Lease Agreement):

ARTICLE I

The Company does hereby lease to the Agency and the Agency hereby leases from the Company the Land described in Exhibit A attached hereto, including all improvements thereto (but excluding the Lessee's Property within the meaning of Section 4.1(c) of the Lease Agreement and any Existing Facility Property released pursuant to Section 4.2 of the Lease Agreement), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that a leasehold estate in all improvements to the Facility Realty hereafter constructed by the Company shall vest in the Agency as and when the same are constructed. Accordingly, the Company and the Agency agree that the Agency shall hold a leasehold estate in all improvements hereafter constructed by the Company to the Facility Realty (but excluding the Lessee's Property within the meaning of Section 4.1(c) of the Lease Agreement and any Existing Facility Property released pursuant to Section 4.2 of the Lease Agreement).

ARTICLE II

The term of this Company Lease shall commence on the Commencement Date and expire on the earlier of (i) 11:59 p.m. (New York City time) on June 30, 2033, or (ii) such earlier or later date as may be provided in accordance with the terms of the Lease Agreement (or upon such earlier termination of the Lease Agreement as provided therein).

ARTICLE III

The sole rental hereunder shall be the single sum of ten dollars (\$10), receipt of which is hereby acknowledged by the Company.

ARTICLE IV

The Company hereby delivers possession to the Agency of the Facility Realty.

ARTICLE V

The Company represents and warrants that the execution and delivery by the Company of this Company Lease and the performance by the Company of its obligations under this Company Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate (i) any provision of law, or any order of any court or agency of government, (ii) the articles of organization or operating agreement of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of

time) a default under any such indenture, agreement or other instrument or would result in the imposition of any lien, charge or encumbrance of any nature whatsoever on the Facility other than Permitted Encumbrances. The Company represents and warrants that it has full right and lawful authority to enter into this Company Lease for the full term hereof. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid leasehold estate in the Facility Realty during the term hereof (subject to Permitted Encumbrances), and the Company shall from time to time take all necessary action to that end.

ARTICLE VI

Neither the Agency nor the Company shall assign or transfer this Company Lease nor sublease the whole or any part of the Facility (except to the extent permitted in accordance with Section 9.3 of the Lease Agreement), nor subject this Company Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances), in any manner, nor sell, assign, convey or otherwise dispose of the Facility or any part thereof, during the term of this Company Lease, in any manner, to any Person, except that (i) the Company will grant a first mortgage lien of its fee title to the Facility, and the Agency will grant a first mortgage lien of its leasehold interest in the Facility under this Company Lease, to the First Mortgagee pursuant to the First Mortgage; (ii) the Company will grant a second mortgage lien on its fee title to the Facility, and the Agency will grant a second mortgage lien on its leasehold interest in the Facility under this Company Lease, to the First Mortgagee pursuant to the Bridge Loan Mortgage; (iii) the Company will grant a mortgage lien on its fee title to the Facility, and the Agency will grant a mortgage lien on its leasehold interest in the Facility under this Company Lease, to the Second Mortgagee pursuant to the Second Mortgage, (iv) the Agency will sublease the Facility Realty to the Company pursuant to the Lease Agreement; and (v) the Company will sub-sublease the Facility Realty to the Sublessee pursuant to the Sublease Agreement.

ARTICLE VII

Except for the Lease Agreement, this Company Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Company Lease or any obligations under this Company Lease, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

ARTICLE VIII

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed, as follows:

(a) if to the Agency, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, and

(b) if to the Company, to 128 44th Realty Holding LLC, c/o Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York 11232, Attention: President, with a copy to Caruso, Caruso & Branda PC, 7302 13th Avenue, Brooklyn, New York 11228, Attention: Mark Caruso, Esq.

ARTICLE IX

This Company Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

The terms of this Company Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Company Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Company Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

ARTICLE X

This Company Lease shall become effective upon the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE XI

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease 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, and no recourse shall be had for the payment of any amounts hereunder against any member, director, officer, employee or agent of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation it may incur shall not subject the Agency to any pecuniary or other liability nor create a debt of

the State or of the City, and neither the State nor the City shall be liable on any obligation so incurred.

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any director, officer, member, employee or agent of the Company in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, member, employee or agent of the Company.

ARTICLE XII

The use of the Facility, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and including the acquisition and renovation of the Facility, and the use, operation, leasing and financing of the Facility, not provided for in this Company Lease, shall be as set forth in the Lease Agreement.

ARTICLE XIII

This Company Lease is and shall be subject and subordinate in all respects to the Mortgages (as defined in the Lease Agreement) and to such mortgage liens and security interests so created thereby; provided, however, that nothing in the Mortgages shall impair the Agency's ability to enforce its rights hereunder against the Company.

The Agency and the Company agree that this Company Lease shall be recorded by the Company in the appropriate Office of the Register of The City of New York.

[Intentionally Left Blank]

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

128 44TH REALTY HOLDING LLC

By:  _____

Nicky Barone
Member

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____

Maureen P. Babis
Executive Director

STATE OF NEW YORK

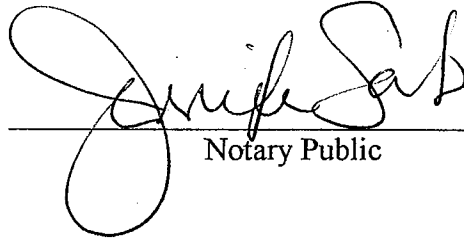
)

: ss.:

COUNTY OF NEW YORK

)

On the 29th day of August, in the year two thousand seven, before me, the undersigned, personally appeared Nicky Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2010

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

On the 28 day of August, in the year two thousand seven, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public/Commissioner of Deeds

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2011

EXHIBIT A

Description of the Land

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.



128 44TH REALTY HOLDING LLC,
as Sublessor

and

BARONE STEEL FABRICATORS, INC.,
as Sublessee

SUBLEASE AGREEMENT

Dated as of August 1, 2007

2007 Barone Steel Fabricators, Inc. Project

Affecting the Land generally known by the street address
128 44th Street, Brooklyn, New York
Section 3, Block 735 and Lot 50

in the County of Kings,
City and State of New York,
as more particularly described in
Exhibit A to this Sublease Agreement
on the Official Tax Map of Kings County

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

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT, made and entered into as of August 1, 2007 (this "**Sublease Agreement**"), by and between **128 44TH REALTY HOLDING LLC**, a limited liability company duly organized and existing under the laws of the State of New York (the "**Sublessor**"), having its principal office at 128 44th Street, Brooklyn, New York 11356, party of the first part, and **BARONE STEEL FABRICATORS, INC.**, a corporation duly organized and existing under the laws of the State of New York (the "**Sublessee**"), having its principal office at 128 44th Street, Brooklyn, New York 11356, party of the second part.

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Sublessor and the Sublessee (the "**Sublessee**"), for an industrial "project" within the meaning of the Act within the territorial boundaries of the City and located on that certain lot, piece or parcel of land in Section 3, Block 735 and Lot 50, generally known as and by the street address as 128 44th Street, Brooklyn, New York (the "**Land**") and otherwise described in Exhibit A — "Description of Land" — attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and renovation of an industrial facility (the "**Facility**"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Sublessee in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "**Project**"); and

WHEREAS, to facilitate the Project, the Agency, the Sublessor and the Sublessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Sublessor will

lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith (as the same may be amended or supplemented, the "**Company Lease**"), between the Sublessor and the Agency, (ii) the Agency will sublease its interest in the Facility Realty to the Sublessor pursuant to a certain Lease Agreement, dated as of even date herewith (as the same may be amended or supplemented, the "**Lease Agreement**"), between the Agency and the Sublessor, and (iii) the Sublessor will sub-sublease the Facility Realty to the Sublessee pursuant to this Sublease Agreement; and, in furtherance of such purposes, the Agency adopted a resolution on July 23, 2007 (the "**Authorizing Resolution**"), authorizing the undertaking of the Project, the acquisition, and renovation of the Facility by the Sublessor, the lease of the Facility Realty by the Sublessor to the Agency, the sublease of the Facility Realty by the Agency to the Sublessor, and the sub-sublease of the Facility Realty by the Sublessor to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Sublessor and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the provision by the Agency of financial assistance to the Sublessor and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the cost of the Project is being financed in part through (i) a loan in the principal amount of \$2,915,000 to be made by SI Bank and Trust (Sovereign Bank) (the "**First Mortgagee**") to the Sublessor (the "**First Mortgage Loan**"), (ii) a loan in the principal amount of \$1,945,000 to be made by Empire State Certified Development Corporation (the "**Second Mortgagee**") to the Sublessor (the "**Second Mortgage Loan**"), and (iii) equity furnished by the Sublessor and/or the Sublessee and/or the proceeds of additional lending; and

WHEREAS, in order to evidence its obligation to repay the First Mortgage Loan, the Sublessor will issue to the First Mortgagee a certain mortgage note (the "**First Mortgage Note**"), dated the Commencement Date, in the principal amount of the First Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Sublessor to the First Mortgagee under the First Mortgage Note, the Sublessor and the Agency will grant a first mortgage on the Facility to the First Mortgagee, subject to permitted encumbrances thereon, pursuant to a certain mortgage and security agreement, dated the Commencement Date (as the same may be amended or supplemented, the "**First Mortgage**"), from the Sublessor and the Agency to the First Mortgagee; and

WHEREAS, in order to evidence its obligation to repay the Second Mortgage Loan, the Sublessor will issue to the Second Mortgagee a certain mortgage note, to be entered

into at a future date (the "**Second Mortgage Note**"), in the principal amount of the Second Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Sublessor to the Second Mortgagee under the Second Mortgage Note, the Sublessor will grant a second mortgage on the Facility to the Second Mortgagee, subject to permitted encumbrances thereon, pursuant to a mortgage and security agreement, to be entered into at a future date (as the same may be amended or supplemented, the "**Second Mortgage**"), from the Sublessor to the Second Mortgagee; and

WHEREAS, the proceeds of the Second Mortgage Loan will not be available to the Sublessor on the Commencement Date; and

WHEREAS, in order to provide bridge financing for a portion of the anticipated proceeds of the Second Mortgage Loan, the First Mortgagee has agreed to make an advance to the Sublessor in the amount of \$1,945,000 on the Commencement Date (the "**Bridge Loan**"); and

WHEREAS, the Bridge Loan is to be evidenced by a certain mortgage note, (the "**Bridge Loan Mortgage Note**"), and secured by a certain mortgage and security agreement, dated the Commencement Date (as the same may be amended or supplemented, the "**Bridge Loan Mortgage**"), from the Sublessor to the First Mortgagee; and

WHEREAS, the Second Mortgage Loan will be made for the benefit of the Sublessor, and the Sublessor will pay to the First Mortgagee from the proceeds of the Second Mortgage Loan all amounts owing under the Bridge Loan, and the Bridge Loan Mortgage will be satisfied in full; and

WHEREAS, simultaneously with the execution and delivery of this Sublease Agreement, the Sublessor will lease the Facility to the Agency pursuant to the Company Lease, subject to Permitted Encumbrances, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein; and

WHEREAS, pursuant to the Lease Agreement, the Agency has subleased the Facility Realty to the Sublessor, with the understanding that the Sublessor will sub-sublease the Facility Realty to the Sublessee pursuant to this Sublease Agreement; and

WHEREAS, pursuant to Section 4.3 of the Lease Agreement, the Sublessor has agreed to make certain payments in lieu of real estate taxes with respect to the Land and the Improvements; and

WHEREAS, this Sublease Agreement is authorized pursuant to Section 9.3 of the Lease Agreement;

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

Section 1. **Definitions**. Any term not defined herein shall have the meaning set forth for such term in the Lease Agreement or in Appendix A attached hereto and made a part hereof.

Section 2. **Construction**. In this Sublease Agreement, unless the context otherwise requires:

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

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

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

(d) Any headings preceding the texts of the several Sections of this Sublease 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 Sublease Agreement, nor shall they affect its meaning, construction or effect.

Section 3. **Representations and Warranties by Sublessee**. The Sublessee makes the following representations, warranties and covenants to the Agency and the Sublessor:

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

(b) The Sublessee shall remain, throughout the term of this Sublease Agreement, a corporation organized under the laws of the State of New York (subject to Section 7 hereof) and in good standing under the laws of the State of New York.

(c) The execution, delivery and performance of this Sublease Agreement and each other Project Document to which it is or shall be a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of the Sublessee and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or bylaws of the Sublessee, or any indenture, agreement or other instrument to which the Sublessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or

constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or threatened by or against the Sublessee by or before any court or administrative agency that would adversely affect the ability of the Sublessee to perform its obligations under this Sublease Agreement or any other Project Document to which it shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Sublessee as of the Commencement Date in connection with the execution and delivery of this Sublease Agreement and each other Project Document to which the Sublessee shall be a party or in connection with the performance of the obligations of the Sublessee hereunder and under each of the Project Documents have been obtained.

(e) The Facility will constitute a "project" under the Act, and the Sublessee intends to operate the Facility, or cause the Facility to be operated, in accordance with this Sublease Agreement and as an Approved Facility and a qualified "project" in accordance with and as defined under the Act.

(f) The financial assistance (within the meaning of the Act) provided by the Agency to the Sublessor and the Sublessee through the straight-lease transaction (within the meaning of the Act) as contemplated by this Sublease Agreement is reasonably necessary to induce the Sublessee to proceed with the Project.

(g) The transactions contemplated by this Sublease Agreement shall not result in the removal of any facility or plant of the Sublessee or any other occupant or user of the Facility from one area of the State to within the City or in the abandonment of one or more facilities or plants of the Sublessee or any other occupant or user of the Facility located within the State.

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

(i) No funds of the Agency shall be used in connection with the transactions contemplated by this Sublease Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(j) This Sublease Agreement and the other Project Documents to which the Sublessee shall be a party constitute the legal, valid and binding obligations of the Sublessee enforceable against the Sublessee in accordance with their respective terms.

(k) The Sublessor and the Sublessee are in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(l) Except as permitted by Section 9.3 of the Lease Agreement, no Person other than the Sublessor and the Sublessee is or will be in use, occupancy or possession of any portion of the Facility.

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

(n) The officers and stockholders of the Sublessee are members of the Sublessor.

Section 4. **Incorporation of Lease Agreement.** The Sublessee acknowledges receipt of a true and complete copy of the Lease Agreement and consents to the terms thereof. All of the terms, conditions and covenants of the Lease Agreement are deemed incorporated by reference in this Sublease Agreement, with the same force and effect as if each and every provision thereof were more fully and at length set forth herein, provided, however, that only the Sublessor can exercise the option to terminate the Lease Agreement as set forth in Article VIII of the Lease Agreement.

Section 5. **Sublease of Facility.** (a) The Sublessor hereby sub-leases the to the Sublessee, and the Sublessee hereby sub-leases from the Sublessor, the Facility for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Sublessee shall at all times during the term of this Sublease Agreement occupy, use and operate the Facility as an Approved Facility in accordance with the provisions of the Act and as a qualified project for the general purposes specified in the recitals to the Lease Agreement.

The term of this Sublease Agreement shall commence on the date of the execution and delivery of this Sublease Agreement and shall expire at 11:57 p.m. (New York City time) on June 30, 2033 or upon such earlier or later date as may be provided in accordance with the terms of the Lease Agreement (or upon such earlier termination of the Lease Agreement as provided therein).

(b) During the term of this Sublease Agreement, the Sublessee agrees to pay sublease rentals to the Sublessor in an amount which will equal the amounts necessary to pay the Rental Payments as the same come due under the Lease Agreement. The Sublessor agrees that any sublease rentals payable pursuant to the preceding sentence of this paragraph (b) shall be paid directly or for the account of the Agency as provided in the Lease Agreement (and hereby

directs the Sublessee and the Sublessee agrees to make such payments), except that if the Lease Agreement requires Rental Payments to be paid otherwise, such sublease rentals shall be paid in the same manner as so required thereunder.

(c) The Sublessee hereby agrees to be bound by each and every obligation, term, covenant, condition and agreement of the Lease Agreement by which the Sublessor as lessee thereunder is bound and hereby assumes all of the Sublessor's obligations and makes all of the waivers made by the Sublessor under the Lease Agreement as if the Sublessee were the named Lessee under the Lease Agreement and agrees to keep and perform all of the obligations, terms, covenants, conditions and agreements of the Lease Agreement and to pay all sums due under the Lease Agreement on the part of the Sublessor thereunder to be kept and performed and further assumes all obligations as specifically relate to the Sublessee as are contained in the Lease Agreement. Those obligations of the Sublessor in the Lease Agreement which are set forth as surviving the termination of the Lease Agreement shall similarly survive as obligations of the Sublessee and survive the termination of this Sublease Agreement.

(d) During the term of this Sublease Agreement, the Sublessee agrees to pay to the Sublessor, in addition to the sublease rentals referenced in paragraph (b) of this Section 5, additional sublease rentals in the amounts and at the times as will enable the Sublessor to satisfy its obligations with respect to the Loans, including all payments due to (i) the First Mortgagee pursuant to the First Mortgage, the First Mortgage Note, (ii) the Second Mortgagee pursuant to the Second Mortgage and the Second Mortgage Note and (iii) the First Mortgagee pursuant to the Bridge Loan Mortgage and the Bridge Loan Mortgage Note.

Section 6. **Nature of Sublessee's Obligations Unconditional.** The Sublessee's obligations under this Agreement to pay sublease rentals shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Sublessor, the Agency or any other Person and the obligation of the Sublessee shall arise whether or not the Project has been completed as provided in the Lease Agreement. The Sublessee will not suspend or discontinue payment of any sublease rental due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Sublessee hereunder for any cause whatsoever, and the Sublessee waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the sublease rentals due or to become due hereunder.

Section 7. **Dissolution or Merger of Sublessee; Restrictions on Sublessee.** The Sublessee covenants and agrees that at all times during the term of this Sublease Agreement, it will (i) maintain its legal existence, (ii) continue to be a corporation subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Sublease Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, the Sublessee, without violating the

foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation (and thereafter liquidate, wind-up or dissolve or not, as the Sublessee may elect) if, (i) the Sublessee is the surviving, resulting or transferee corporation, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Sublessee immediately prior to such consolidation, merger or transfer, or (ii) in the event that the Sublessee is not the surviving, resulting or transferee company (1) the surviving, resulting or transferee company (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State and (B) assumes in writing all of the obligations of the Sublessee contained in this Sublease Agreement and all other Project Documents to which the Sublessee shall be a party, (2) the Sublessee delivers to the Agency an Opinion of Counsel to the effect that this Sublease Agreement and all other Project Documents to which the Sublessee shall be a party constitute the legal, valid and binding obligations of such successor Sublessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Sublessee, (3) in the opinion of an Independent Accountant, such successor Sublessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Sublessee immediately prior to such merger, consolidation, sale or transfer and (4) delivers to the Agency the Required Disclosure Statement as provided in the Lease Agreement, in form and substance satisfactory to the Agency, provided that if any modification to such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Sublessee shall be in default under this Agreement.. The Sublessee further represents, covenants and agrees that it is and throughout the term of this Sublease Agreement will continue to be owned by the same individuals as shall own the beneficial ownership in the Sublessor.

Section 8. **Events of Default**. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Sublessee to pay any rental under Section 5(b) or 5(d) hereof that has become due and payable by the terms hereof which results in the occurrence of an Event of Default under the Lease Agreement;

(b) (i) Failure of the Sublessee to pay any amount (except the obligation to pay rent under Section 5(b) or 5(d) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Section 6 or 7 hereunder or with respect to Section 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 7.6, 8.5, 9.3 or 9.14 of the Lease Agreement and continuance of such failure for a period of thirty (30) days after receipt by the Sublessee of written notice specifying the nature of such default from the Agency;

(ii) Failure of the Sublessee to pay any amount (except the obligation to pay rent under Section 5(b) or 5(d) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed with respect to

Section 4.5 of the Lease Agreement and continuance of such failure for a period of fifteen (15) days after receipt by the Sublessee of written notice specifying the nature of such default from the Agency;

(c) Failure of the Sublessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 8(a) or (b) above) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Sublessee of written notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Sublessee 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 Sublessee, the Sublessor or any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Sublessee, the Sublessor or any Guarantor, 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 Sublessee, the Sublessor or any Guarantor, or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days, or any order for relief against the Sublessee, the Sublessor or any Guarantor shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Sublessee, the Sublessor or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 7 hereof, Section 6.1 of the Lease Agreement, or Section 2.6 of the Guaranty Agreement;

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

(g) An "Event of Default" under the Guaranty Agreement or the Lease Agreement shall occur and be continuing.

Whenever any Event of Default shall have occurred and be continuing, the Agency may take any of the same remedial steps with respect to the Sublessee under this Sublease Agreement as are set forth in Section 7.2 of the Lease Agreement with respect to an Event of Default thereunder.

Section 9. **Sublease Agreement for Benefit of the Agency.** It is understood and agreed by the parties hereto that this Sublease Agreement is entered into for the benefit of the Agency (and the Mortgagees in the case of Section 5(d) hereof), and the payments, obligations, covenants and agreements of the parties hereto may be enforced by the Agency (and the Mortgagees in the case of Section 5(d) hereof) as if it were a party to this Sublease Agreement.

Section 10. **Recording.** An original of this Sublease Agreement shall be recorded by the Sublessee subsequent to the recordation of the Lease Agreement in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 11. **Miscellaneous.** (a) This Sublease Agreement shall inure to the benefit of the Sublessor, the Sublessee and the Agency (and the Mortgagees in the case of Section 5(d) hereof), and shall be binding upon the Sublessor and the Sublessee and their respective successors and assigns.

(b) This Sublease Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

(c) The Sublessor and the Sublessee agree that this Sublease Agreement is subject to and is expressly subordinated to the Lease Agreement, the Company Lease, the Mortgages and the other Permitted Encumbrances and all extensions, modifications, amendments and renewals thereof.

(d) This Sublease Agreement shall not be assigned, modified, amended, rescinded, terminated, repealed or cancelled without the prior written consent of the Agency, provided, however, that no amendment pertaining directly or indirectly to the rights, powers or privileges of the Mortgagees shall be effective without the consent of the Mortgagees.

(e) The Sublessee shall not seek to recover from the Agency any moneys paid to the Agency pursuant to this Sublease Agreement, whether by reason of set-off, counterclaim or deduction or for any reason whatsoever. The Sublessee covenants and agrees (w) that whenever the consent or approval of the Sublessor is required or permitted under this Sublease Agreement, the written consent or approval of the Agency shall first be obtained before taking any action or omitting to take any action for which such consent or permission is needed by the Sublessor; (x) simultaneously to give to the Agency copies of all notices and communications by

the Sublessee under this Sublease Agreement; (y) that the Agency shall not be obligated by reason of the assignment of this Sublease Agreement or otherwise to perform or be responsible for the performance of any duties or obligations of the Sublessor hereunder; and (z) not to make any prepayments of rents or other sums due hereunder to the Sublessor unless such prepayments shall also be simultaneously applied as a prepayment of Rental Payments due or to become due under the Lease Agreement.

(f) The Sublessee 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.

All notices, certificates or other communications hereunder shall be sufficient if sent by return receipt requested or registered or certified United States mail, postage prepaid, addressed, if to the Sublessor, to 128 44th Realty Holding LLC, c/o Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York 11356, Attention: President, with a copy to Caruso, Caruso & Branda PC, 7302 13th Avenue, Brooklyn, New York 11228, Attention: Mark Caruso, Esq., if to the Sublessee, to Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York 11356, Attention: President. Copies of any notices delivered to the Sublessor or to the Sublessee shall also be sent to the Agency at 110 William Street, New York, New York 10038, Attention: General Counsel, with a copy to the Executive Director of the Agency at the same address, to the First Mortgagee, to SI Bank & Trust (Sovereign Bank), 1535 Richmond Avenue, Staten Island, New York 10314, Attention: Commercial Mortgage Loans, with a copy to Cullen & Dykman, LLP, 44 Wall Street 19th Floor, New York, New York 10005, Attention: Patricia R. Russo, Esq., to the Second Mortgagee, to Empire State Certified Development Corporation, 633 Third Avenue, 36th Floor, New York, New York 10036, Attention: Chet Sadowski, with a copy to Certilman, Balin, Adler & Hyman LLP, 90 Merrick Avenue, East Meadow, New York 11554, Attention: Michael O'Shea, Esq

(g) This Sublease Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Sublessor and the Sublessee relating to the Facility.

(h) If any clause, provision or section of this Sublease Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

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

(j) This Sublease Agreement shall become effective on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(k) It is the intention of the parties hereto that this Sublease Agreement be a "net lease" and that the (y) portion of the rent set forth in Section 5(b) of this Sublease Agreement be available for Rental Payments under the Lease Agreement and (z) the portion of the rent set forth in Section 5(d) of this Sublease Agreement be available to pay the amounts due under the Loans, and this Sublease Agreement shall be construed to effect such intent.

(l) 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 Sublease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Sublease Agreement.

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

(m) The Sublessee shall not make, or suffer to be made, any leases (other than the Lease Agreement and the Sublease Agreement and subleases made in accordance with Section 9.3 of the Lease Agreement) or cancel or modify any leases or further assign the whole or any part of the rents without the prior written consent of the Agency. No lease (other than the Lease Agreement and this Sublease Agreement) covering all or any part of the Facility shall be valid or effective without the prior written approval of the Agency. In respect of any lease, the Sublessee will (i) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (ii) promptly send copies of all notices of default which it shall send or receive thereunder to the Agency, and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Sublease Agreement shall be deemed to impose on the Agency any of the obligations of the lessor under the leases.

All leases must provide that the Sublessee and its tenant shall, at the Agency's option, furnish the Agency with an estoppel and attornment letter as to the leases in form and substance acceptable to the Agency.

The Sublessee will furnish to the Agency, upon its request therefor, a detailed statement in writing duly sworn, and covering the period of time specified in such request, containing a list of the names of all tenants of the Facility and occupants other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

(n) The date of this Sublease Agreement shall be for reference purposes only and shall not be construed to imply that this Sublease Agreement was executed on the date first above written. This Sublease Agreement was executed and delivered on the Commencement Date.

IN WITNESS WHEREOF, the Sublessor and the Sublessee have authorized the execution of this Sublease Agreement, all being done as of the year and day first above written.

128 44TH REALTY HOLDING LLC, as Sublessor

By: Ralph Barone
Ralph Barone
Member

BARONE STEEL FABRICATORS, INC., as
Sublessee

By: Nicky Barone
Nicky Barone
President

STATE OF NEW YORK)

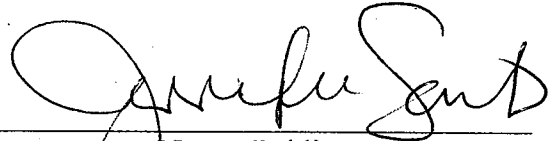
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: ss.:

COUNTY OF NEW YORK)

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On the 29th day of August, in the year two thousand seven, before me, the undersigned, personally appeared Ralph Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2010

STATE OF NEW YORK

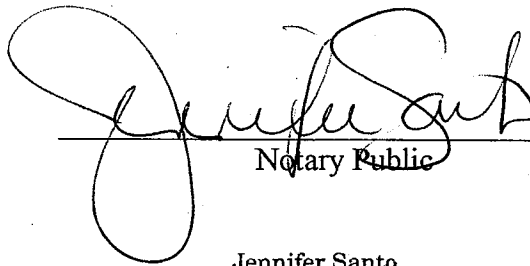
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: ss.:

COUNTY OF NEW YORK

)

On the 29th day of August, in the year two thousand seven, before me, the undersigned, personally appeared Nicky Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2010

APPENDICES

EXHIBIT A

Description of the Land

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

APPENDIX A

Event of Default shall have the meaning specified in Section 8 hereof.

Land shall mean that certain lot, piece or parcel of land generally known by the street address 128 44th Street, Brooklyn, New York, as more particularly described in Exhibit A "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 of the Lease Agreement.

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

Sublease Agreement shall mean this Sublease Agreement, dated as of even date herewith, between the Sublessor and the Sublessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

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GUARANTY AGREEMENT

From

128 44TH REALTY HOLDING LLC
as Lessee,

and

BARONE STEEL FABRICATORS, INC.,
as Sublessee,

BAR FAB STEEL CORP.,
as Corporate Guarantor

And

NICKY BARONE,
an individual residing at

1840 67th Street, Brooklyn, NY 11204

and

RALPH BARONE,
an individual residing at

252 Tennyson Drive, Staten Island, NY 10308

collectively, as Individual Guarantors,

To

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

Dated as of August 1, 2007

2007 Barone Steel Fabricators, Inc. Project

GUARANTY AGREEMENT

This Guaranty Agreement made and entered into as of the date set forth on the cover page hereof (this "**Guaranty**") (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease Agreement referred to herein or in Appendix A attached hereto and made a part hereof), from the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors indicated on the cover page hereof (the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors being collectively, the "**Guarantors**"), to New York City Industrial Development Agency (the "**Agency**"), a public benefit corporation organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038:

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, commercial, research, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and the Sublessee for a "project" within the meaning of the Act within the territorial boundaries of the City and located on that certain lot, piece or parcel of land in Section 3, Block 735 and Lot 50, generally known as and by the street address 128 44th Street, Brooklyn, New York (the "**Land**"); and

WHEREAS, the Project will consist of the acquisition and renovation of an industrial facility (the "**Facility**"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Sublessee in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "**Project**"); and

WHEREAS, to facilitate the Project, the Agency, the Lessee and the Sublessee have commenced negotiations to enter into a “straight-lease transaction” within the meaning of the Act and pursuant to the Agency’s Industrial Incentive Program, and pursuant thereto, (i) the Lessee will lease the Facility Realty to the Agency pursuant to a certain Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency (as the same may be amended or supplemented, the “**Company Lease**”), (ii) the Agency will sublease its interest in the Facility Realty to the Lessee pursuant to a Lease Agreement, dated as of even date herewith, between the Agency and the Lessee (as the same may be amended or supplemented, the “**Lease Agreement**”), and (iii) the Lessee will sub-sublease its interest in the Facility Realty to the Sublessee pursuant to a Sublease Agreement, dated as of even date herewith (as the same may be amended or supplemented, the “**Sublease Agreement**”), and in furtherance of such purposes, the Agency adopted a resolution on July 23, 2007 (collectively, the “**Authorizing Resolution**”), authorizing the undertaking of the Project, the acquisition and renovation of the Facility by the Lessee, the lease of the Facility Realty by the Lessee to the Agency, the sublease of the Facility Realty by the Agency to the Lessee, and the sub-sublease of the Facility Realty by the Lessee to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the Guarantors are desirous that the Agency enter into the Lease Agreement with the Lessee and provide financial assistance to the Lessee and the Sublessee as a “straight-lease transaction” within the meaning of the Act and are willing to enter into this Guaranty in order to guarantee to the Agency all payments, obligations, covenants and agreements of the Lessee under the Lease Agreement, and of the Sublessee under the Sublease Agreement, and thereby induce the Agency to take such actions;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration received, the Guarantors do hereby, subject to the terms hereof, represent, warrant, covenant and agree, jointly and severally, with the Agency, as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES OF GUARANTORS

Section 1.1. Representations and Warranties of Guarantors. (a) The Guarantors do hereby represent and warrant that: (i) the Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has power to enter into and perform this Guaranty and to own its property and assets, has duly authorized the execution and delivery of this Guaranty by proper action, and neither this Guaranty, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its articles of organization or operating agreement, or any other requirement of law; (ii) the Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has power to enter into and perform this Guaranty and to own its property and assets, has duly authorized the execution and delivery of this Guaranty by proper action, and neither this Guaranty, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Sublessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its certificate of incorporation or bylaws or any other requirement of law; (iii) the Corporate Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has power to enter into and perform this Guaranty and to own its property and assets, has duly authorized the execution and delivery of this Guaranty by proper action, and neither this Guaranty, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Corporate Guarantor is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its certificate of incorporation or bylaws or any other requirement of law; and (iv) each of the Individual Guarantors is subject to service of process in the State of New York, has power and capacity to enter into and perform this Guaranty and to own his respective property and assets, has duly executed and delivered this Guaranty, and neither this Guaranty, the execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which any of the Individual Guarantors is a party or by which either or any of his respective property is subject to or bound, or be in conflict with or result in a breach of or

constitute (with due notice and/ or lapse of time) a default under any such indenture, agreement, or other instrument, or any other requirement of law.

(b) Except as set forth in the Lease Agreement, none of the Guarantors, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Guarantors:

1. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

2. has been convicted of a misdemeanor and/or found in violation of any administrative, statutory, or regulatory provision in the past five (5) years;

3. has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

4. has any felony, misdemeanor and/or administrative charges currently pending;

5. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

6. has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(c) This Guaranty constitutes the legal, valid and binding joint and several obligation of the Guarantors, enforceable against the Guarantors in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium or insolvency or other law affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) The assumption by each Guarantor of his or its obligations hereunder will result in a direct financial benefit to such Guarantor.

ARTICLE II

AGREEMENT TO GUARANTEE

Section 2.1. Obligations Guaranteed. (a) The Guarantors hereby unconditionally and jointly and severally guarantee to the Agency (1) the full and prompt payment of an amount equal to each and all of the rental payments when and as the same shall become due, required to be paid by the Lessee under the terms of the Lease Agreement; (2) the full and prompt performance and observance by the Lessee of all of the obligations, covenants and agreements required to be performed and observed by the Lessee under the terms of the Lease Agreement; (3) the full and prompt payment of the rental payments under the Sublease Agreement when and as the same shall become due and payable (excluding the rental payments under Section 5(d) of the Sublease Agreement); and (4) the full and prompt performance and observance of all of the obligations, covenants and agreements required to be performed and observed by the Sublessee under the terms of the Sublease Agreement (the payments, obligations, covenants and agreements in this paragraph being collectively referred to herein as the "**Guaranteed Obligations**"). The Guarantors further hereby irrevocably and unconditionally agree, jointly and severally, that upon default in any of the Guaranteed Obligations, the Guarantors will promptly pay the same or effect the observance of such obligations, covenants and agreements, as the case may be. All payments by the Guarantors shall be paid in lawful money of the United States of America. Each and every default in any of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(b) The Guarantors further agree, jointly and severally, that this Guaranty constitutes an absolute, unconditional, present and continuing guarantee of performance and payment and not of collection, and waive any right to require that any resort be had by the Agency to the Agency's rights against any other Person, or to any other right or remedy available to the Agency by contract, applicable law or otherwise. The respective obligations of the Guarantors under this Guaranty are direct, unconditional and completely independent of the obligations of any other Person, and a separate cause of action or separate causes of action may be brought and prosecuted against any or all of the obligated Guarantors without the necessity of joining the Sublessee or any other party or previously proceeding with or exhausting any other remedy against any other Person who might have become liable for the obligations guaranteed hereunder.

Section 2.2. Obligations Unconditional. The respective obligations of the Guarantors under this Guaranty shall be absolute and unconditional, and joint and several, to the extent so provided herein, and shall remain in full force and effect until all the Guaranteed Obligations shall have been paid in full or provided for, and all costs, Agency's fees and expenses, if any, referred to in Section 2.5 hereof shall have been paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified, released, or impaired by any state of facts or the happening from time to time of any event.

Section 2.3. No Waiver or Set-Off. No act of commission or omission of any kind or at any time upon the part of the Agency or its successors or assigns, in respect of any matter whatsoever shall in any way impair the rights of the Agency to enforce any right, power or benefit under this Guaranty and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Guarantors of their obligations hereunder), which any Guarantor or any obligor under any of the Project Documents has or may have against the Agency or any assignee or successor thereof shall be available hereunder to the Guarantors.

Section 2.4. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

(a) any Guarantor defaults in the payment or performance of any Guaranteed Obligation for which such Guarantor is obligated and such default continues for more than three (3) business days after written notice thereof has been given to any or all of the Guarantors by the Agency;

(b) any Individual Guarantor fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.6 hereof and such failure continues for a period of thirty (30) days after receipt by any or all of the Guarantors of written notice specifying the nature of such default or failure from the Agency;

(c) any or all of the Guarantors fails to observe and perform any covenant, condition or agreement hereunder on their part to be performed (except as set forth in Section 2.4(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by any or all of the Guarantors of written notice specifying the nature of such default or failure from the Agency, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, any or all of the Guarantors fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence their efforts to cure the same or fails to cure the same within sixty (60) days of receipt of said notice;

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

(e) a proceeding or case shall be commenced, without the application or consent of any Guarantor 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 any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms "dissolution" or "liquidation" of any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 of the Lease Agreement, Section 7 of the Sublease Agreement or Section 2.6 hereof; or

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

Upon an Event of Default, the Agency shall have the right to proceed first and directly against any or all of the Guarantors jointly and severally under this Guaranty without proceeding against or exhausting any other remedies which it may have under the Lease Agreement or any other Project Document and without resorting to any security held by any other Person.

Section 2.5. Waiver of Notice; Expenses. Each Guarantor hereby expressly waives presentment, demand, protest and notice of non-payment and further waives notice from the Agency of its acceptance and reliance on this Guaranty or of any action taken or omitted in reliance hereon, and of any default by any Guarantor in the Guaranteed Obligations. Each Guarantor further expressly waives diligence, presentment, demand for payment, protest, and requirement that any right or power be exhausted or any action be taken against the Lessee or the Sublessee. Each Guarantor agrees to pay all reasonable costs, fees and expenses (including all reasonable attorneys' fees and disbursements) which may be incurred by the Agency in enforcing or attempting to enforce the provisions of this Guaranty following any default on the part of any or all of the Guarantors hereunder, whether the same shall be enforced by suit or otherwise.

Section 2.6. Dissolution or Merger of Guarantors, Restrictions on Guarantors. Each Individual Guarantor agrees that he will not dispose of all or substantially all of his property, business or assets remaining after the execution and delivery of this Guaranty, except (i) in an arms' length bona fide transaction with an unrelated party in exchange for fair market value consideration, (ii) for transfers to members of his immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, or (iii) as the direct result of an award of equitable dissolution (or similar award) and/or a settlement agreement concluded in a bona fide transaction as a result of, or arising from, a marital dissolution; provided, however, that no transfers made pursuant to clause (ii) shall be deemed to relieve or otherwise discharge such Individual Guarantor, or his estate, from any and all duties and obligations hereunder. Further, each Individual Guarantor, without the prior written consent of the Agency, will not permit the

sale or other disposition of a controlling interest in the Lessee or the Sublessee (whether by a single transaction or a series of transactions) to any other persons, corporations or other entities. Controlling interest shall mean the ownership of 51% of the beneficial ownership and voting interest in the Lessee and the Sublessee.

Section 2.7. Benefit and Enforcement. This Guaranty is entered into by the Guarantors for the benefit of the Agency, and the Agency is entitled to all rights and remedies as may exist at law or in equity or otherwise in the enforcement of this Guaranty.

Section 2.8. Survival of Guaranteed Obligations. If the Agency receives any payment on account of the Guaranteed Obligations, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be transferred or repaid to a trustee, receiver, assignee for the benefit of creditors or any other party under any bankruptcy act or code, state or federal law or common law or equitable doctrine or for any other reason whatsoever, then to the extent of any sum not finally retained by the Agency, this Guaranty shall remain in full force and effect until the Guarantors obligated with respect thereto shall have made payment to the Agency of such sum, which payment shall be due on demand. If the Agency chooses to contest any such matter, the Guarantors obligated with respect thereto agree to indemnify and hold harmless the Agency with respect to all costs (including court costs and reasonable attorneys' fees) of such litigation.

Section 2.9. No Subrogation. No payment hereunder by any or all of the Guarantors shall entitle any or all of the Guarantors by subrogation to the rights of the Agency to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Guaranteed Obligations.

ARTICLE III

NOTICE OF SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. Service of Process. Each Guarantor represents that it or he is subject to service of process in the State of New York and covenants that it or he will remain so subject so long as any of the Guaranteed Obligations remain unpaid or unsatisfied. If for any reason any Guarantor should cease to be so subject to service of process in the State of New York, such Guarantor hereby designates and appoints the President of the Sublessee as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon any Guarantor as a result of any of its obligations under this Guaranty, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, each Guarantor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon such Guarantor as a result of any of its obligations under this Guaranty; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to any Guarantor's obligations hereunder.

Section 3.2. Notices. Any notice required to be sent to any Guarantor, or any notice including process, pleadings or other papers served upon any of the foregoing agents shall at the same time, be sent by facsimile and by registered or certified mail, postage prepaid, to the Guarantors, at the Guarantors' Notice Address, or to such other address as may be furnished by any Guarantor to the Agency in writing. Notices will be deemed to have been received five (5) Business Days after the mailing thereof.

Section 3.3. Consent to Jurisdiction. Each Guarantor irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Guaranty may be brought in the courts of record of the State of New York in New York County or the courts of the United States, Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as any of the Guaranteed Obligations shall be unpaid in whole, or in part, the Guarantors' agents designated in Section 3.1 hereof shall accept and acknowledge on the Guarantors' behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Guarantors agree and consent that any such service of process upon such agents and written notice of such service to the Guarantors in the manner set forth in Section 3.2 hereof shall be taken and held to be valid personal service upon the Guarantors whether or not the Guarantors shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Guarantors according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the

Guarantors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantors.

Section 3.4. Waiver of Trial by Jury. The Guarantors do hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Guaranty or any matters whatsoever arising out of or in any way connected with this Guaranty.

ARTICLE IV

MISCELLANEOUS

Section 4.1. No Alteration Without Consent. No amendment, change, modification, alteration or termination of the provisions of the Guaranteed Obligations shall be made which would in any way increase any or all of the Guarantors' obligations under this Guaranty without obtaining the prior written consent of the Guarantors. No acts or omissions recited in Section 2.2 hereof shall constitute any such amendment, change, modification, alteration or termination within the meaning of this Section 4.1.

Section 4.2. Guaranty to Become Effective. The obligations of the Guarantors hereunder shall arise absolutely and unconditionally on the Commencement Date when the Lease Agreement shall have been executed and delivered by the Agency and the Lessee and the Sublease Agreement shall have been executed and delivered by the Lessee and the Sublessee.

Section 4.3. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty or otherwise required by law. In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Guaranty.

Section 4.4. Entire Agreement; Counterparts. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Lease Agreement and any other Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 4.5. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty contained, shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 4.6. Release. Upon the payment and satisfaction of all Guaranteed Obligations and, if applicable, upon payment of the costs, fees and expenses required by Section 2.5, the Agency shall release in writing the Guarantors from their obligations hereunder (except as provided in Section 2.8 hereof and except to the extent that any of the Guaranteed Obligations are stated to survive the termination of the Lease Agreement or the Sublease Agreement).

Section 4.7. Applicable Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 4.8. Successors and Assigns. This Guaranty shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

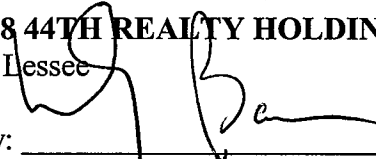
Section 4.9. Right of Set-Off. Each Guarantor hereby grants to the Agency a lien and right to set-off for all of its liabilities and obligations under this Guaranty against all the deposits, credits and property of such Guarantor and any collateral of such Guarantor now or hereafter in the possession, under the control or in transit to the Agency, and agrees that the same may be applied against such liabilities and obligations then due, at any time after an Event of Default has occurred and continues under this Guaranty.

Section 4.10. Date of Guaranty for Reference Purposes Only. The date of this Guaranty shall be for reference purposes only and shall not be construed to imply that this Guaranty was executed on the date first above written. This Guaranty was executed and delivered on the Commencement Date.


[Intentionally Left Blank]

IN WITNESS WHEREOF, each Guarantor has duly authorized the execution of this Guaranty as of the date first above written.

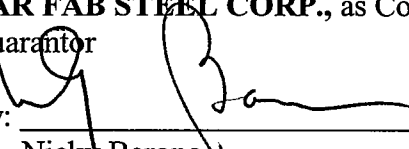
128 44TH REALTY HOLDING LLC,
as Lessee

By: 
Nicky Barone
Member

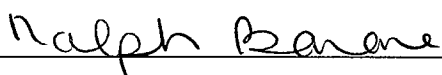
BARONE STEEL FABRICATORS, INC.
as Sublessee

By: 
Nicky Barone
President

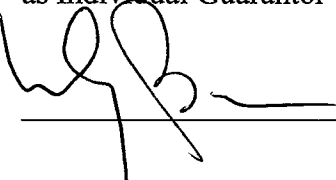
BAR FAB STEEL CORP., as Corporate
Guarantor

By: 
Nicky Barone
President

RALPH BARONE,
as Individual Guarantor



NICKY BARONE,
as Individual Guarantor



Accepted this August 29, 2007

by **NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Maureen P. Babis
Executive Director

APPENDIX A

“Event of Default” shall have the meaning assigned to that term in Section 2.4 hereof.

“Guarantors’ Notice Address” shall mean c/o Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York 11356, Attention: President, with a copy to Caruso Caruso & Branda, 7302 13th Avenue, Brooklyn, New York 11228, Attention: Mark Caruso, Esq.

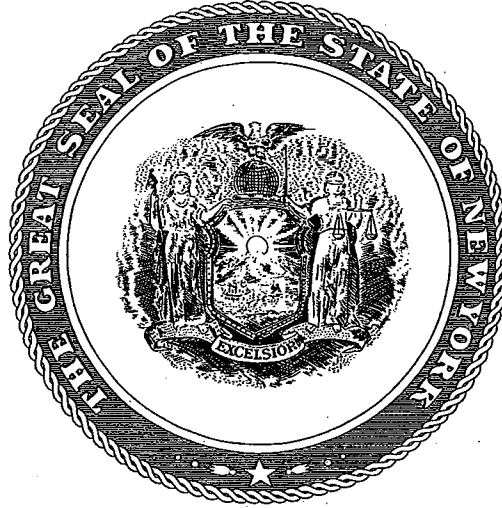
“Guaranty” shall mean this Guaranty Agreement, dated as of August 1, 2007, from the Guarantors to the Agency, and includes any and all amendments hereof and supplements hereto.

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

“State” shall mean the State of New York.



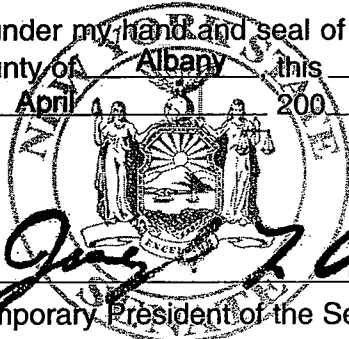
STATE OF NEW YORK



SENATE and ASSEMBLY

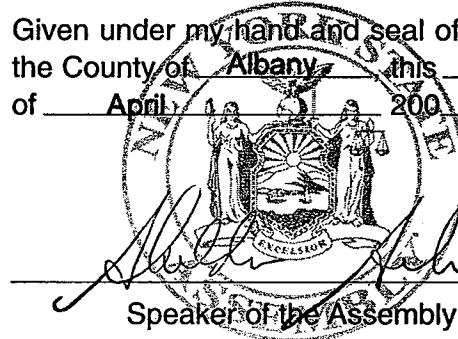
Pursuant to the authority vested in us by section 70-b of the Public Officers Law and upon information and belief, I, Joseph L. Bruno, Temporary President of the Senate and I, Sheldon Silver, Speaker of the Assembly, hereby jointly certify that the text of the provisions of law contained in this publication is a correct transcript of the text of such law as last amended as of the date of execution of this certificate, and, in accordance with such section, is entitled to be read into evidence.

Given under my hand and seal of office, in
the County of Albany this 17th day
of April 2007.



Temporary President of the Senate

Given under my hand and seal of office, in
the County of Albany this 17th day
of April 2007.



Speaker of the Assembly

This certification is issued for: (title of publication) _____

New York State General Municipal Law
§§850-888, 911-a and 917

Law: GMU Id: A18-AT1 General Municipal

TITLE 1--AGENCIES, ORGANIZATION AND POWERS

- Section 850. Short title.
852. Policy and purposes of article.
854. Definitions.
856. Organization of industrial development agencies.
858. Purposes and powers of the agency.
- 858-a. Compensation, procurement and investment.
- 858-b. Equal employment opportunities.
859. Financial records.
- 859-a. Additional prerequisites to the provisions of financial assistance.
- 859-b. Special procedure for the provision of financial assistance to continuing care retirement communities.
860. Moneys of the agency.
861. Notification of budget.
862. Restrictions on funds of the agency.
- 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities.
864. Bonds of the agency.
866. Notes of the agency.
868. Agreements of the municipality and state.
870. State and municipality not liable on bonds or notes.
872. Bonds and notes as legal investment.
874. Tax exemptions.
876. Tax contract by the state.
878. Remedies of bondholders and noteholders.
880. Actions against the agency.
882. Termination of the agency.
883. Conflicts of interest.
884. Public bidding.
886. Title not affected if in part unconstitutional or ineffective.
888. Inconsistent provisions in other acts superseded.

Law: GMU Id: 850 General Municipal

S 850. Short title. This chapter may be cited as the "New York State Industrial Development Agency Act."

Law: GMU Id: 852 General Municipal

S 852. Policy and purposes of article. It is hereby declared to be the policy of this state to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects identified and called for to implement a state heritage area management plan as provided in title G of the parks, recreation and historic preservation law through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies which are hereby declared to be governmental agencies and instrumentalities and to grant to such industrial development agencies the rights and powers provided in this article.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities and research facilities and to grant such industrial development agencies the rights and powers provided by this article with respect to industrial pollution control facilities.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state and to increase trade through promoting the development of facilities to provide recreation for the citizens of the state and to attract tourists from other states.

The use of all such rights and powers is a public purpose essential to the public interest, and for which public funds may be expended.

Law: GMU Id: 854: General Municipal

S 854. Definitions. As used in this act, unless the context otherwise requires:

(1) "Agency" - shall mean an Industrial Development Agency created pursuant to this act.

(2) "Bonds" - shall mean the bonds, notes, interim certificates and other obligations issued by the agency pursuant to this act.

(3) "Municipality" - shall mean any county, city, village, town or Indian reservation in the state.

* (4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility, a railroad facility, a continuing care retirement community, or a civic facility, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall provide financial assistance in any respect to a continuing care retirement community, and provided, however, no agency shall provide financial assistance in respect of any project partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which any part of the project is, or is to be, located. Where a project is located partially within and partially outside the municipality for whose benefit the agency was created, the portion of the project outside the municipality must be contiguous with the portion of the project inside the municipality. Provided further, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility.

* NB Effective until July 1, 2007

* (4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility or a railroad

facility, provided, however, no agency shall use its funds in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located.

* NB Effective July 1, 2007

(5) "Governing body" - shall mean the board or body in which the general legislative powers of the municipality are vested.

(6) "Mortgage" - shall mean a mortgage or other security device.

(7) "Revenues" - shall mean all rents, revenues, fees, charges and other sources of income derived by the agency from the leasing, sale or other disposition of a project or projects.

(8) "Industrial pollution control facility"--shall mean any equipment, improvement, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith, which if within any city are not of a character or nature then or formerly furnished or supplied by the city, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution deriving from the operation of industrial, manufacturing, warehousing, commercial, recreation and research facilities, including, but not limited to any air pollution control facility, noise abatement facility, water management facility, waste water collecting system, waste water treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site.

(9) "Recreation facility"--shall mean any facility for the use of the general public as spectators or participants in recreation activities, including but not limited to skiing, golfing, swimming, tennis, ice skating or ice hockey facilities, together with all buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of recreation facilities by the general public as participants in recreation activities, but shall not include facilities for automobile or horse racing or other similar activities.

(10) "Horse racing facility"--shall mean any facility for the use of the general public for purpose of conducting pari-mutuel wagering, licensed by the state racing and wagering board, as of January first, nineteen hundred seventy-seven, except non-profit racing associations, including buildings, structures, machinery, equipments, facilities and appurtenances thereto, the construction, reconstruction, acquisition and/or improvement of which shall have been approved by the state racing and wagering board, and which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of such racing facility.

(11) "Railroad facility"--shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and rolling stock and any other attendant structure, equipment, facility or property necessary or appropriate to railroading conducted in conjunction with industrial, commercial, manufacturing, recreational or warehousing operations; provided, however, that (i) no agency shall itself operate a railroad facility for freight or passenger service, but may lease or otherwise make such facility available to an operator,

subject to an agreement for the maintenance and operation of such facility for freight or passenger service, provided that passenger service does not constitute the primary purpose of the railroad facility; (ii) prior to undertaking any project involving acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility, an agency shall submit its plans for the proposed project to the commissioner of transportation; the commissioner shall, within sixty days of his receipt of the proposal, submit an analysis of the financial and operational feasibility of the proposed project, along with any recommendations for modification for improving the project's viability, to the agency, the governor, the commissioner of commerce, the temporary president of the senate, the speaker of the assembly and the governing body of the municipality in which the agency is located; and (iii) no agency shall enter into any contract for the acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility until fifteen days after the submission of the analysis and recommendations of the commissioner of transportation, or seventy-five days after submission of the agency's plan to the commissioner, whichever is earlier.

(12) "Educational or cultural facility"--shall mean any facility identified and called for to implement a state designated heritage area management plan as provided in title G of the parks, recreation and historic preservation law that is open to the public at large as participants in educational and cultural activities including but not limited to theaters, museums, exhibitions and festival and interpretive facilities, together with buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of educational or cultural facilities by the general public.

* (13) "Civic facility" - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

* NB Repealed July 2, 2007

* NB There are 2 sb (13)'s

* (13) "Civic facility" - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

Notwithstanding the limitations contained in the preceding sentence, a

civic facility project may include: (a) dormitories for educational institutions; (b) facilities as defined in article twenty-eight of the public health law; and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older provided that the total cost of such projects as provided for in paragraphs (a), (b), and (c) herein does not exceed twenty million dollars. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or any other approval as provided by law.

* NB Repealed July 1, 2007

* NB There are 2 sb (13)'s

(14) "Financial assistance" - shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

(15) "Straight-lease transaction" - shall mean a transaction in which an agency takes title, possession or control (by lease, license or otherwise) to the property or equipment of a project occupant, entitling such property or equipment to be exempt from taxation according to the provisions of section eight hundred seventy-four of this article, and no financial assistance in the form of the proceeds of bonds issued by the agency is provided to the project occupant.

(16) "Affected tax jurisdiction" - shall mean any municipality or school district, in which a project is located, which will fail to receive real property tax payments, or other tax payments which would otherwise be due, except for the tax exempt status of an agency involved in a project.

(17) "Payments in lieu of taxes" - shall mean any payment made to an agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.

(18) "Highly distressed area" - shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or

(c) an area which was designated an empire zone pursuant to article eighteen-B of this chapter.

(19) "Continuing care retirement community" - shall mean any facility that has been granted a certificate of authority pursuant to article forty-six or forty-six-A of the public health law and is established to

provide, pursuant to continuing care retirement contracts approved pursuant to article forty-six of the public health law, or fee-for-service continuing care contracts approved pursuant to article forty-six-A of the public health law, a comprehensive, cohesive living arrangement for the elderly, and certified by the commissioner of health, that (i) has been approved for the issuance of industrial development agency bonds by the continuing care retirement community council pursuant to section forty-six hundred four-a of the public health law except that paragraphs b and g of subdivision two of section forty-six hundred four-a of the public health law shall not apply to a continuing care retirement community granted a certificate of authority pursuant to article forty-six-A of the public health law and (ii) is a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law that is (a) eligible for tax-exempt financing under section forty-six hundred four-a of the public health law and this chapter and (b) is exempt from taxation pursuant to section 501(c)(3) of the federal internal revenue code; except that "continuing care retirement community" shall not include a facility granted a certificate of authority upon application of a state or local government applicant.

§ 856. Organization of industrial development agencies. 1. (a) Upon the establishment of an industrial development agency by special act of the legislature, the governing body of the municipality for whose benefit such agency is established shall file within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, in the office of the secretary of state, a certificate setting forth: (1) the date of passage of the special act establishing the agency; (2) the name of the agency; (3) the names of the members and their terms of office, specifying which member is the chairman; and (4) facts establishing the need for the establishment of an agency in such municipality.

(b) Every such agency shall be perpetual in duration, except that if (1) such certificate is not filed with the secretary of state within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later; or if (2) at the expiration of ten years subsequent to the effective date of the special act, there shall be outstanding no bonds or other obligations theretofore issued by such agency or by the municipality for or in behalf of the agency, then the corporate existence of such agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(c) On or before March first of each year, the secretary of state shall prepare a list of agencies which failed to file a certificate in accordance with provisions of paragraph (a) of this subdivision within the preceding calendar year and transmit a copy of such list to the state comptroller and the commissioner of the department of economic development. On or before March first of each year the commissioner of the department of economic development shall prepare a list of agencies which have dissolved pursuant to paragraph (b) of this subdivision or have ceased to exist pursuant to section eight hundred eighty-two of this chapter and shall transmit a copy of such list to the state comptroller.

2. An agency shall be a corporate governmental agency, constituting a public benefit corporation. Except as otherwise provided by special act of the legislature, an agency shall consist of not less than three nor more than seven members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority. Such members may include representatives of local government, school boards, organized labor and business. A member shall continue to hold office until his successor is appointed and has qualified. The governing body of each municipality shall designate the first chairman and file with the secretary of state a certificate of appointment or reappointment of any member. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

3. A majority of the members of an agency shall constitute a quorum.

4. Any one or more of the members of an agency may be an official or an employee of the municipality. In the event that an official or an employee of the municipality shall be appointed as a member of the agency, acceptance or retention of such appointment shall not be deemed a forfeiture of his municipal office or employment, or incompatible therewith or affect his tenure or compensation in any way. The term of

office of a member of an agency who is an official or an employee of the municipality when appointed as a member thereof by special act of the legislature creating the industrial development agency shall terminate at the expiration of the term of his municipal office.

Law: GMU Id: 858 General Municipal

§ 858. Purposes and powers of the agency. The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living; and to carry out the aforesaid purposes, each agency shall have the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold and dispose of personal property for its corporate purposes;
- (4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service upon or in conjunction with such facilities.
- (5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.
- (6) With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;
- (7) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency;
- (8) (a) To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;
(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to parties other than the agency the written statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the agency.
- (9) To make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or

corporation, either public or private; provided, however, that any extension of an existing contract, lease or other agreement entered into by an agency with respect to a project shall be guided by the provisions of this article;

(10) To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

(11) To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

(12) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

(13) To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;

(14) To designate the depositories of its money either within or without the state;

(15) To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions;

(16) To establish and re-establish its fiscal year; and

(17) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

Law: GMU Id: 858-A General Municipal

S 858-a. Compensation, procurement and investment. 1. The compensation of an officer or full-time employee of the agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the agency) shall not be contingent on the granting of financial assistance by an agency.

2. The provisions of section one hundred four-b of this chapter shall be applicable to the procurement of goods and services paid for by an agency for its own use and account.

3. The provisions of sections ten and eleven of this chapter shall be applicable to deposits and investments of funds for an agency's own use and account.

Law: GMU Id: 858-B General Municipal

S 858-b. Equal employment opportunities. 1. Each agency shall ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination.

2. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the agency shall be listed with the New York state department of labor community services division, and with the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. Except as is otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall agree, where practicable, to first consider persons eligible to participate in the federal job training partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the community services division of the department of labor for such such new employment opportunities.

Law: GMU Id: 859 General Municipal

S 859. Financial records. 1. (a) Each agency shall maintain books and records in such form as may be prescribed by the state comptroller.

(b) Within ninety days following the close of its fiscal year, each agency or authority shall prepare a financial statement for that fiscal year in such form as may be prescribed by the state comptroller. Such statement shall be audited within such ninety day period by an independent certified public accountant in accordance with government accounting standards established by the United States general accounting office. The audited financial statement shall include supplemental schedules listing all straight-lease transactions and bonds and notes issued, outstanding or retired during the applicable accounting period whether or not such bonds, notes or transactions are considered obligations of the agency. For each issue of bonds or notes such schedules shall provide the name of each project financed with proceeds of each issue, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each bond or note was issued, date of issue, interest rate at issuance and if variable the range of interest rates applicable, maturity date, federal tax status of each issue, and an estimate of the number of jobs created and retained by each project. For each straight-lease transaction, such schedules shall provide the name of each project, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each transaction was made, the method of financial assistance utilized by the project, other than the tax exemptions claimed by the project and an estimate of the number of jobs created and retained by each project.

(c) Within thirty days after completion, a copy of the audited financial statement shall be transmitted to the commissioner of the department of economic development, the state comptroller and the governing body of the municipality for whose benefit the agency was created.

(d) An agency with no bonds or notes issued or outstanding and no projects during the applicable accounting period may apply to the state comptroller for a waiver of the required audited financial statement. Application shall be made on such form as the comptroller may prescribe.

(e) If an agency or authority shall fail to file or substantially complete, as determined by the state comptroller, the financial statement required by this section, the state comptroller shall provide notice to the agency or authority. The notice shall state the following:

(i) that the failure to file a financial statement as required is a violation of this section, or in the case of an insufficient financial statement, the manner in which the financial statement submitted is deficient;

(ii) that the agency or authority has thirty days to comply with this section or provide an adequate written explanation to the comptroller of the agency's or authority's reasons for the inability to comply; and

(iii) that the agency's or authority's failure to provide either the required financial statement or an adequate explanation will result in the notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's noncompliance with this section. Where such agency or authority has

failed to file the required statement, the comptroller shall additionally notify the agency or authority that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(iv) If an agency or authority after thirty days has failed to file the required statement or the explanation in the manner required by subparagraph (i) of this paragraph, or provides an insufficient explanation, the comptroller shall notify the chief executive officer of the municipality for whose benefit the agency or authority was created and the agency of the agency's or authority's noncompliance with this section. Such notice from the state comptroller shall further delineate in what respect the agency or authority has failed to comply with this section. If the agency or authority has failed to file the required statement, the notice shall additionally state that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(v) If, thirty days after notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's or authority's noncompliance, the agency or authority fails to file the required statement, the comptroller shall notify the chief executive officer of the municipality for whose benefit that agency or authority was created and the agency or authority that if such report is not provided within sixty days, that the agency or authority will no longer be authorized to provide exemptions from state taxes.

(vi) If, sixty days after the notification required by subparagraph (v) of this paragraph, the comptroller has not received the required statement, the agency or authority shall not offer financial assistance which provides exemptions from state taxes until such financial statement is filed and the comptroller shall so notify the agency or authority and the chief executive officer of the municipality for whose benefit the agency was created. Provided, however, that nothing contained in this paragraph shall be deemed to modify the terms of any existing agreements.

(f) Within thirty days after completion, a copy of an audited financial statement which contains transactions of or bonds or notes of civic facilities as defined in paragraph (b) of subdivision thirteen of section eight hundred fifty-four of this article, shall be transmitted by the agency to the commissioner of health, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate health committee and the chair of the assembly health committee.

2. On or before September first of each year, the commissioner of the department of economic development shall prepare and submit to the governor, speaker of the assembly, majority leader of the senate, and the state comptroller, a report setting forth a summary of the significant trends in operations and financing by agencies and authorities; departures from acceptable practices by agencies and authorities; a compilation by type of the bonds and notes outstanding; a compilation of all outstanding straight-lease transactions; an estimate of the total number of jobs created and retained by agency or authority projects; and any other information which in the opinion of the commissioner bears upon the discharge of the statutory functions of agencies and authorities.

3. On or before April first, nineteen hundred ninety-six, the commissioner shall submit to the director of the division of the budget,

the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate local government committee, the chairman of the senate committee on commerce, economic development and small business, the chairman of the assembly committee on commerce, industry and economic development, the chairman of the assembly local governments committee and the chairman of the assembly real property taxation committee an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department. Such evaluation shall identify the effect of agencies and authorities on: (a) job creation and retention in the state, including the types of jobs created and retained; (b) the value of tax exemptions provided by such agencies and authorities; (c) the value of payments received in lieu of taxes received by municipalities and school districts as a result of projects sponsored by such entities; (d) a summary of the types of projects that received financial assistance; (e) a summary of the types of financial assistance provided by the agencies and authorities; (f) a summary of criteria for evaluation of projects used by agencies and authorities; (g) a summary of tax exemption policies of agencies and authorities; and (h) such other factors as may be relevant to an assessment of the performance of such agencies and authorities in creating and retaining job opportunities for residents of the state. Such evaluation shall also assess the process by which agencies and authorities grant exemptions from state taxes and make recommendations for the most efficient and effective procedures for the use of such exemptions. Such evaluation shall further include any recommendations for changes in laws governing the operations of industrial development agencies and authorities which would enhance the creation and retention of jobs in the state.

Law: GMU Id: 859-A General Municipal

S 859-a. Additional prerequisites to the provisions of financial assistance. Prior to providing any financial assistance of more than one hundred thousand dollars to any project, the agency must comply with the following prerequisites:

1. The agency must adopt a resolution describing the project and the financial assistance that the agency is contemplating with respect to such project. Such assistance shall be consistent with the uniform tax exemption policy adopted by the agency pursuant to subdivision four of section eight hundred seventy-four of this chapter, unless the agency has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency. Said public hearing shall be held in a city, town or village where the project proposes to locate. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project.

* 3. The agency must give at least thirty days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the agency with respect to the project, and provide an opportunity for the public to review the project application, which shall include an analysis of the costs and benefits of the proposed project.

* NB Effective until July 1, 2007

* 3. The agency must give at least ten days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the agency with respect to the project.

* NB Effective July 1, 2007

Law: GMU Id: 859-B General Municipal

S 859-b: Special procedure for the provision of financial assistance to continuing care retirement communities. 1. Any applicant for financing of a continuing care retirement community shall present a completed application for a certificate of authority and documentation establishing the continuing care retirement community council's approval of that application, pursuant to article forty-six of the public health law.

2. If requested by the agency, the applicant shall present an analysis dealing with any of the issues identified in paragraph (a) of subdivision four of section eight hundred seventy-four of this article.

3. Applicants shall present the financial feasibility study, including a financial forecast and market study, and the analysis of economic costs and benefits required by article forty-six of the public health law.

4. Any information presented by the applicant pursuant to subdivisions one, two and three of this section shall be made available at the time required for published notice of the public hearing required by section eight hundred fifty-nine-a of this article. The agency shall make such information available during regular office hours in at least two locations, at least one of which shall be in the city, town or village within which the proposed project is located. Such notice shall include a statement indicating the location and times of availability of the information required by this section.

5. The industrial development agency may require the applicant to provide any additional information which it requires in order to meet the purposes of this article.

Law: GMU Id: 860 General Municipal

§ 860. Moneys of the agency. The agency shall have power to contract with the holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any moneys of the agency or any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and to carry out any such contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the agency, and all banks and trust companies are authorized to give such security for such deposits.

Law: GMU Id: 861 General Municipal

S 861: Notification of budget. Each agency shall mail or deliver to the chief executive officer and the governing body of the municipality for whose benefit the agency was established and make available for public inspection and comment its proposed budget for the forthcoming fiscal year, no later than twenty business days before adoption. At such time, the agency shall file its proposed budget with the clerk of the municipality for whose benefit the agency was established. Such proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and expenditures to be made during the forthcoming fiscal year. Following its consideration of the comments received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

Law: GMU Id: 862 General Municipal

* S 862. Restrictions on funds of the agency. 1. No financial assistance of the agency shall be used in respect of any project if the completion thereof would result in the removal of a facility or plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

2. (a) Except as provided in paragraph (b) of this subdivision, no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the 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 tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects and projects operated by not-for-profit corporations shall not be prohibited by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where (i) the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state, or (ii) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, or (iii) the project is located in a highly distressed area.

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine-a of this chapter that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.

3. No funds of the agency shall be used for the purpose of preventing

the establishment of an industrial or manufacturing plant, nor shall any funds of the agency be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within this state nor shall such funds be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media.

* NB Effective until July 2, 2007

* S 862. Restrictions on funds of the agency. No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

* NB Effective July 2, 2007

Law: GMU Id: 862-A General Municipal

S 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities. No resolution authorizing the issuance of bonds, notes or other obligations of the agency, or for providing financial assistance in any respect, for any continuing care retirement community project shall be adopted unless and until the project has received a certificate of authorization pursuant to section forty-six hundred four-a of the public health law, and unless the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state.

Law: GMU Id: 864 General Municipal

S 864. Bonds of the agency. (1) The agency shall have the power and is hereby authorized from time to time to issue negotiable bonds for any of its corporate purposes without limitation as to amount. The agency shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded. Except as may otherwise be expressly provided by the agency, the bonds of every issue shall be special obligations of the agency payable solely from revenues derived from the leasing, sale or other disposition of a project, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, the bonds shall be, and are hereby made, negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

(2) The bonds shall be authorized by resolution of the agency and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, either within or without the state, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds may be sold at public or private sale at such price or prices as the agency shall determine.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) pledging all or any part of the revenues derived from the leasing, sale or other disposition of a project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) the rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) limitations on the right of the agency to restrict and regulate the use of a project;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(f) the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine which may include any or all the rights, powers and duties of the trustees appointed by the bondholders and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, duties and powers of trustee;

(i) any other matters, of like or different character, which in any way affect the security or protection of the bonds.

Law: GMU Id: 866 General Municipal

§ 866. Notes of the agency. The agency shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates for any purpose or purposes for which bonds may be issued, whenever the agency shall determine that payment thereof can be made in full from any moneys or revenues which the agency expects to receive from any source. The agency may secure the notes in the same manner and with the same effect as herein provided for bonds. The notes shall be issued in the same manner as bonds. The agency shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the agency shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes or violation of any of the obligations of the agency to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the agency.

Law: GMU Id: 868 General Municipal

S 868. Agreements of the municipality and state. The municipality is authorized to, and the state does hereby, pledge to and agree with the holders of the bonds or notes that neither the municipality nor the state, respectively, will limit or alter the rights, hereby vested in the agency to acquire, construct, reconstruct, improve, maintain, equip and furnish the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds or notes nor in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders or noteholders are fully met and discharged.

Law: GMU Id: 870 General Municipal

S 870. State and municipality not liable on bonds or notes. The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the state nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency.

Law: GMU Id: 872 General Municipal

S 872. Bonds and notes as legal investment. The bonds and notes are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or notes or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds or notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Law: GMU Id: 874- General Municipal

S 874. Tax exemptions. (1) It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

(2) Any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency, shall be exempt from taxation, except for transfer and estate taxes.

(3) Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

(4) (a) The agency shall establish a uniform tax exemption policy, with input from affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this chapter and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; percentage of exemption; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

* (b) The uniform tax exemption policy established pursuant to this section shall be reviewed and readopted by the agency on or before April first, nineteen hundred ninety-nine following a public hearing. Notice of this hearing shall be given to the chief executive officer of each affected tax jurisdictions at least sixty days before the hearing. Prior to the hearing the agency shall review, and respond to any correspondence received from any affected tax jurisdiction. The agency shall allow any representative of an affected tax jurisdiction to address the agency at the hearing. The agency shall develop and submit a report to the affected tax jurisdictions sixty days prior to the hearing which details the projects which the agency has assisted in the previous five years and shall include information specific to each project including the period of exemption; the type of project; the estimated percentage of exemption by year; the estimated value of any other assistance provided by the agency; whether commitments for payments in

lieu of taxes were made and met, the estimated value of such payments by year and affected tax jurisdiction; the estimated amount of private sector investment generated by the project; and the extent to which the project created or retained permanent, private sector jobs.

* NB Effective until July 1, 2007

* (b) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

* NB Effective July 1, 2007

* (c) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction at least thirty days prior to the meeting of the agency at which the agency shall consider whether to approve such proposed deviation. Prior to taking final action at said meeting, the agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding such proposed deviation. The agency shall allow any representative of an affected tax jurisdiction present at such meeting to address the agency regarding such proposed deviation.

* NB Effective until July 1, 2007

(5) Payments in lieu of taxes which are delinquent under the agreement or which an agency fails to remit pursuant to subdivision three of this section, shall be subject to a late payment penalty of five percent of the amount due which shall be paid by the project occupant (where taxes are delinquent because of the occupant's failure to make the required payment) or the agency (because of the agency's failure to remit pursuant to subdivision three of this section) to the affected tax jurisdiction at the time the payment in lieu of taxes is paid. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment penalty in the amount of one percent per month until the payment is made.

(6) An affected tax jurisdiction which has not received a payment in lieu of taxes due to it under an agreement may commence legal action in any court of competent jurisdiction directly against any person, firm, corporation, organization or agency which is obligated to make payments in lieu of taxes under an agreement and has failed to do so. In such an action, the affected tax jurisdiction shall be entitled to recover the amount due, the late payment penalty, interest, expenses, costs and disbursements together with the reasonable attorneys' fees necessary to prosecute such action. Nothing herein shall be construed as providing an affected tax jurisdiction with the right to sue and recover from an agency which has not received payments in lieu of taxes from a project occupant.

(7) Any refinancing of a project shall be subject to the provisions of section eight hundred fifty-nine-a of this chapter, except where such refinancing was previously approved pursuant to such section.

(8) Agents of an agency and project operators shall annually file a statement with the state department of taxation and finance, on a form

and in such a manner as is prescribed by the commissioner of taxation and finance, of the value of all sales and use tax exemptions claimed by such agents or agents of such agents or project operators, including, but not limited to, consultants or subcontractors of such agents or project operators, under the authority granted pursuant to this section. The penalty for failure to file such statement shall be the removal of authority to act as an agent of an agency or a project operator.

* (9) Within thirty days of the date that the agency designates a project operator or other person to act as agent of the agency for purposes of extending a sales tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency, setting forth the taxpayer identification number of each such agent, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

* NB Repealed July 1, 2007

Law: GMU Id: 876 General Municipal

S 876. Tax contract by the state. The state covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by the agency pursuant to this title, in consideration of the acceptance of and payment for the bonds or notes, that the bonds and notes of the agency issued pursuant to this title and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

S 878. Remedies of bondholders and noteholders. (1) In the event that the agency shall default in the payment of principal or of interest on any issue of the bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes, then outstanding shall, in his or its own name:

(a) by suit, action or special proceeding enforce all rights of the bondholders or noteholders, including the right to require the agency to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) bring suit upon such bonds or notes;

(c) by action or special proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(d) by action or special proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(e) declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(3) The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the project or projects are located.

(4) Before declaring the principal of all such bonds due and payable, the trustee shall first give thirty days' notice in writing to the agency.

(5) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of a project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders or noteholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that the agency has covenanted to construct, and with any construction which the agency is under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues

thereafter arising therefrom subject to any pledge thereof or agreement with bondholders or noteholders relating thereto and perform the public duties and carry out the agreements and obligations of the agency under the direction of the court. In any suit, action or proceeding by the trustee, the fee, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(6) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

Law: GMU Id: 880 General Municipal

S 880. Actions against the agency. (1) In an action against the agency founded upon tort, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which the action is founded were presented to a member of the agency and to its secretary or to its chief executive officer, and that the agency has neglected or refused to make an adjustment or payment thereof for thirty days after the presentment.

(2) In a case founded upon tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the agency or an officer, appointee or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice. No action shall be commenced more than one year after the cause of action therefor shall have accrued.

Law: GMU Id: 882 General Municipal

S 882. Termination of the agency. Whenever all of the bonds or notes issued by the agency shall have been redeemed or cancelled, the agency shall cease to exist and all rights, titles, and interest and all obligations and liabilities thereof vested in or possessed by the agency shall thereupon vest in and be possessed by the municipality.

Law: GMU Id: 883 General Municipal

§ 883: Conflicts of interest. All members, officers, and employees of an agency or authority shall be subject to the provisions of article eighteen of this chapter.

Law: GMU Id: 884 General Municipal

S 884. Public bidding. The provisions of any law relating to the requirement of public bidding with respect to the construction of public facilities or projects shall not be applicable to the acquisition, construction, reconstruction, improvement, maintenance, equipping and furnishing of projects authorized by this act.

Law: GMU Id: 886 General Municipal

S 886. Title not affected if in part unconstitutional or ineffective. If any section, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

Law: GMU Id: 888 General Municipal

S 888. Inconsistent provisions in other acts superseded. Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local laws of the municipality, the provisions of this title shall be controlling except in cases of inconsistency with the Indian law.

Law: GMU Id: 917 General Municipal

* S 917. City of Poughkeepsie industrial development agency. For the benefit of the City of Poughkeepsie and the inhabitants thereof, an industrial development agency, to be known as the CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies and provided that the exercise of the powers by such agency with respect to the acquisition of real property whether by purchase, condemnation or otherwise, shall be limited to the corporate limits of the City of Poughkeepsie, and such agency shall take into consideration the local zoning and planning regulations as well as the regional and local comprehensive land use plans. It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the City of Poughkeepsie. The agency, its members, officers and employees and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.

* NB There are 2 S 917's

Law: GMU Id: 917*2 General Municipal

* S 917. New York City Industrial Development Agency. (a) Legislative intent. It is the policy and intent of the City of New York to promote the economic welfare of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of a New York City Industrial Development Agency. It is recognized that the viability and integrity of the residential communities in New York City should be protected and maintained so that no person be deprived of his place of residence by any condemnation for economic or industrial development undertaken pursuant to this article.

(b) For the purpose of this section "city" means the city of New York.

(b-1) For the purposes of this section, "rail freight facility" shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and any other attendant structure, facility, fixture or property necessary or appropriate for rail freight transportation conducted in conjunction with industrial, commercial, manufacturing, or warehousing operations solely for the purpose of providing or improving freight rail service between an industrial or commercial facility or group of such facilities in physical proximity to one another and a main line railroad track, freight yard or other means of connection to main line railroad facilities; provided, however, that (i) with respect to any rail freight facility project the New York City Industrial Development Agency shall be restricted solely to the provision of financial assistance for such rail freight facility; (ii) that the project may not include any main line track (except to the extent that the project may include replacement of the amount of main line track used for passenger and/or freight service required to provide a suitable connection), any passenger facilities of any kind, or any rights-of-way, bridges or viaducts used for any purpose other than the rail transportation of freight from the industrial, commercial, manufacturing or warehousing facility or facilities to be served by the rail service to the main line track or other freight facility, provided, however, that nothing herein shall prohibit the project from including bridges or viaducts with separate provision for pedestrian traffic when it is determined that a separate pedestrian walkway is necessary or desirable for safety purposes; (iii) prior to undertaking the financing of any rail freight facility the New York City Industrial Development Agency shall submit a written description of such rail freight facility project to the commissioner of transportation who shall, within thirty days of receipt of such description, provide written comments on such project to the New York City Industrial Development Agency; and (iv) the New York City Industrial Development Agency shall not enter into any contract for providing financial assistance to such rail freight facility project until the earlier of either the date on which the New York City Industrial Development Agency addresses the comments of the commissioner of transportation to the satisfaction of such commissioner, or, if such commissioner has not submitted written comments, forty-five days after the New York City Industrial Development Authority submitted the written project description required by paragraph (iii) of this subdivision.

** (c) For the benefit of the city and the inhabitants thereof an industrial development agency, to be known as the New York City Industrial Development Agency, is hereby established for the

accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter, except that it shall not have the power to construct or rehabilitate any residential facility or housing of any nature and kind whatsoever, nor shall it use any of its funds to further the construction or rehabilitation of any residential facility or housing of any nature and kind whatsoever. It shall constitute a body corporate and politic, and be perpetual in duration. It shall only have the powers and duties conferred by title one of article eighteen-A of this chapter upon industrial development agencies as of January 1, 1973 except that it shall have the power to finance a rail freight facility and it shall have the power to finance a civic facility as such project is defined in subdivision thirteen of section eight hundred fifty-four of this chapter and it shall not have the power of condemnation. In the exercise of the powers conferred upon such agency with respect to the acquisition of real property by article eighteen-A of this chapter such agency shall be limited to the geographical jurisdictional limits of the city.

** NB Effective until July 2, 2007

** (c) For the benefit of the city and the inhabitants thereof an industrial development agency, to be known as the New York City Industrial Development Agency, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter, except that it shall not have the power to construct or rehabilitate any residential facility or housing of any nature and kind whatsoever, nor shall it use any of its funds to further the construction or rehabilitation of any residential facility or housing of any nature and kind whatsoever. It shall constitute a body corporate and politic, and be perpetual in duration. It shall only have the powers and duties conferred by title one of article eighteen-A of this chapter upon industrial development agencies as of January 1, 1973 except that it shall have the power to finance a rail freight facility and it shall not have the power of condemnation. In the exercise of the powers conferred upon such agency with respect to the acquisition of real property by article eighteen-A of this chapter such agency shall be limited to the geographical jurisdictional limits of the city.

** NB Effective July 2, 2007

(d) It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter, except that its board shall consist of fifteen members. Among its membership shall be the city comptroller, the city administrator of the economic development administration, the corporation counsel of such city and the chairman of the city planning commission of such city, each of whom shall have the power to designate an alternate to represent them at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation be in writing to the chairman of the board. Six of the remaining eleven members shall be appointed by the mayor of such city upon consultation with the economic development council, business and labor organizations and elected officials and five shall be appointed by the mayor upon designation by the borough improvement boards of such city, one member from each borough.

(e) The Mayor shall designate the chairman of the board, who shall serve at the pleasure of the Mayor.

(f) The terms of the directors first appointed by the Mayor, other than the chairman of the board shall be as follows:

four shall serve for terms of one year each, two of whom shall have

been designated by the borough improvement boards;

three shall serve for terms of two years each, two of whom shall have been designated by the borough improvements boards;

three shall serve for terms of three years each, one of whom shall have been designated by the borough improvement boards; thereafter the successors of all ten such directors shall serve for terms of three years each. The Mayor shall fill any vacancy which may occur by reason of death, resignation, or otherwise in a manner consistent with the original appointment. Members may be removed by the Mayor for cause after a hearing upon ten days' written notice. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

(g) The chief executive officer of the agency shall be appointed by a two-thirds vote of the board of directors.

(h) The agency, its members, officers, and employees, shall be subject to article fourteen of the civil service law and for all such purposes the agency shall be deemed the "public employer" and its members, officers and employees shall be deemed "public employees"; provided, however, that chapter fifty-four of the New York City Charter, chapter fifty-four of the Administrative Code of the City of New York, and executive order number fifty-two dated September twenty-ninth, nineteen hundred sixty-seven, issued by the Mayor of the City, shall apply to the agency, its members, officers and employees except that section eight of said executive order shall not be applicable. The agency shall establish general and special grievances as defined in chapter fifty-four of the Administrative Code of the City except as otherwise provided in collective bargaining agreements.

(i) The City shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the City and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.

(j) The city shall have the power to condemn property for transfer to the New York City Industrial Development Agency under title one of article eighteen-A of this chapter upon the request of two-thirds of the members of the Board of Directors of the New York city industrial development agency. No property shall be condemned on behalf of the agency which is zoned "residential" as defined in the zoning resolution of the city, or which is occupied in whole or in part as a dwelling or residence.

(k) For the purpose of this section "governing body" as used in such title one of article eighteen-A of this chapter shall mean the Mayor of the City. Except as otherwise provided in this section, the agency, its members, officers and employees, and its operations and activities shall be governed by the provisions of title one of article eighteen-A of this chapter.

(l) The city shall save harmless and indemnify any person who is serving or has served as a director or officer or as employee of the New York City Industrial Development Agency against any financial loss arising out of or in connection with any claim, demand, suit or judgment, based on a cause of action involving allegations that pecuniary harm was sustained by any person as a result of any transaction, act or omission to act of the Industrial Development Agency or of any action or inaction or vote of any director, officer or

employee of such Agency unless such individual is found by a final judicial determination not to have acted in good faith for a purpose he reasonably believed to be in the best interests of the Agency or not to have had reasonable cause to believe that his conduct was lawful. Provided, however, that such individual must transmit to the corporation counsel of the city of New York any notice of claim, summons or complaint or other analogous paper served on him within ten days of its receipt unless prevented from doing so by compelling circumstances. The corporation counsel shall, without charge, represent any such individual unless unable to do so by reason of conflict of interest. In the event that the corporation counsel is unable to give such representation, the city of New York shall indemnify the individual for any reasonable litigation expense incurred by him.

* NB. There are 2 S 917's

Law: GMU Id: 911-A General Municipal

S 911-a. Suffolk county industrial development agency. 1. For the benefit of the Suffolk county and the inhabitants thereof, an industrial development agency, to be known as the SUFFOLK COUNTY INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies and provided that the exercise of the powers by such agency with respect to the acquisition of real property whether by purchase, condemnation or otherwise, shall be limited to the corporate limits of the county of Suffolk, and such agency shall be subject to the local town and village zoning and planning regulations and take into consideration the regional and local comprehensive land use plans. It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the county of Suffolk. The agency, its members, officers and employees and its operations and activities, except as provided specifically herein, shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.

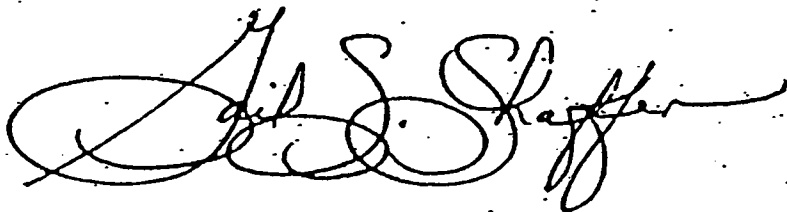
2. In addition to the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter, the agency shall have the power (i) to acquire a lease-hold interest in, to reconstruct, construct additions to, own, maintain, equip and to lease or sell its interest in the sewer system or any part thereof for the collection, conveyance, treatment and disposal of sewage of the Southwest sewer district of the county of Suffolk, which may include any or all right, title and interest of the county of Suffolk, or of the Southwest sewer district of said county, in and to any land and rights in land, any buildings, structures and improvements now or at any time hereafter erected or constructed upon such land or rights in land, any fixtures attached thereto, and any personal property of any kind and description, whether the same is a structural or nonstructural component, and any alterations, replacements, additions or substitutions for any of the foregoing, and (ii) to finance the foregoing, or any part thereof, through the issuance of its bonds and notes.

3. Notwithstanding any inconsistent provision of law, all of the terms and conditions with respect to the bonds and notes authorized by subdivision two hereof, including but not limited to the fees to be paid for the preparation or servicing thereof, the financing agreements, resolutions or arrangements needed or required to carry out the provisions of such subdivision, and all indemnification agreements shall be subject to the prior approval of the state comptroller.

State of New York
DEPARTMENT OF STATE

It is Hereby Certified, That the attached copy of the certificate of establishment for the New York City Industrial Development Agency and the certificates of appointment of the members, filed November 27, 1974 and the certificates of appointment of the members, filed December 13, 1976, July 11, 1977, February 14, 1977, July 11, 1977, October 7, 1977, December 27, 1977, October 3, 1978, December 4, 1978, May 14, 1982, and March 3, 1987, are true copies of the originals thereof on file in this office.

Witness my hand and the official seal of the
Department of State at the City of
Albany, this 15th day
of October one thousand
nine hundred and eighty-seven



Secretary of State

CERTIFICATE OF ESTABLISHMENT

OF

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

For Filing with Secretary of State

THIS is to certify that the NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") has been established by special act of the New York State Legislature. The following facts and information are set forth pursuant to Section 856 of the New York State Industrial Development Agency Act:

1. The special act establishing the Agency was passed by the New York State Legislature on June 15, 1974, and became Chapter 1082 of the Laws of 1974, effective immediately.

2. The name of the Agency is: NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY.

3. The names of the members of the Agency, their Chairman, and their terms of office are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>TERM OF OFFICE</u>
William S. Brennan	Chairman	At pleasure of the Mayor of the City of New York
Richard Lewisohn	Member	Three-year term
Harrison J. Goldin Comptroller of the City of New York	Member	Terminates at the expiration of the term of his municipal office

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 27 1974

John J. [Signature]

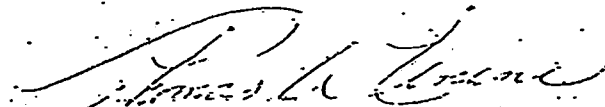
<u>NAME</u>	<u>TITLE</u>	<u>TERM OF OFFICE</u>
Alfred Eisenpreis Administrator of Economic Development Administration	Member	Terminates at the expiration of the term of his municipal office.
Adrian P. Burke Corporation Counsel	Member	Terminates at the expiration of the term of his municipal office.
John Zuccotti Chairman - City Planning Commission	Member	Terminates at the expiration of the term of his municipal office.
Edgardo N. Vazquez Basso	Member	1-year term
Joseph J. Holzka	Member	2-year term
Bruce Llewellyn	Member	3-year term
Joseph J. Solar	Member	1-year term
Dr. Eugene Callender	Member	2-year term
Samuel Plotkin	Member	3-year term
Bernard Richards	Member	1-year term
Thomas Schleier	Member	1-year term
Jerome B. Sheir	Member	2-year term

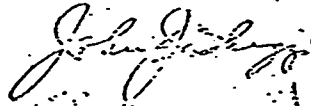
STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
FILED NOV 27 1974
John J. [Signature]
Secretary of State

4. The facts establishing the need for the Agency in the municipality are as follows: The City of New York desires (i) to promote the economic welfare and the health of its

inhabitants, (ii) to actively promote, attract, encourage and develop an economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration and (iii) to abate and control pollution of land, air and water. The purpose of the Agency is to promote, develop and encourage and assist in the acquiring, construction, reconstructing, improving, maintaining and equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and pollution control facilities and thereby to advance the job opportunities, general prosperity, economic welfare and health of the inhabitants of the City of New York.

THE MAYOR OF THE CITY OF NEW YORK

By: 
Clerk of the City of New York
First Deputy City Clerk

STATE OF NEW YORK
DEPARTMENT OF STATE
NOV 27 1974

Secretary of State

IDA BOARD OF DIRECTORS

MEMBERS

Albert V. De Leon
Joseph I. Douek
Kevin Doyle
Bernard Haber
Jose L. Orengo
Derek B. Park, Vice Chairman
Rafael A. Salaberrios
Robert D. Santos

Ex Officio Members

Barry Dinerstein, alternate for Amanda M. Burden,
Chair of the City Planning commission of The City of New York
John Graham, alternate for William C. Thompson, Jr.,
Comptroller of The City of New York
Angela Sun, alternate for Daniel L. Doctoroff
Deputy Mayor for Economic Development and Rebuilding of The City of New York
Leonard M. Wasserman, alternate for Michael A. Cardozo, Esq.,
Corporation Counsel of The City of New York



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

June 13, 2005

Ms. Barbara Basser-Bigio
40 East 80th Street, Apt. 15B
New York, New York 10021

Dear Ms. Basser-Bigio: ✓

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term ending on September 30, 2005, to be immediately followed by a full three-year term ending on September 30, 2008.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

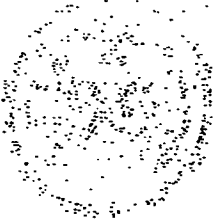
Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

June 13, 2005

Robert D. Santos, Esq.
39-12 Packard Street
Sunnyside Gardens, New York 11104

Dear Mr. Santos:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term ending on September 30, 2005, to be immediately followed by a full three-year term ending on September 30, 2008.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

June 13, 2005

Albert V. De Leon, Esq.
140 8th Avenue, Apt. 2P
Brooklyn, New York 11215

Dear Mr. De Leon:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term expiring on September 30, 2007.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

June 13, 2005

Derek B. Park, Ph.D.
Trump Parc Tower
106 Central Park South
New York, New York 10019

Dear Dr. Park:

Pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately for a three-year term expiring on September 30, 2007.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jb

cc: Andrew M. Alper, IDA Chair



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

July 11, 2005

José L. Orengo, Esq.
260 East 10th Street, Apt. 9
New York, New York 10009

Dear Mr. Orengo: ✓

Following your designation by the Manhattan Borough President, and pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term expiring on November 20, 2006.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

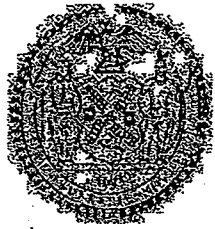
Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jb

cc: Andrew M. Alper
C. Virginia Fields



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

[Handwritten signatures and initials]
C. [unclear]
B. [unclear]
J. [unclear]

May 13, 2002

Mr. Joseph L. Douck
1761 East 8th Street
Brooklyn, New York 11223

Dear Mr. Douck:

By the authority vested in me as Mayor by Section 21 of the General Municipal Law of the State of New York, I hereby appoint you as a member of the Board of Directors of the New York City Industrial Development Agency.

On February 5, 2002, the President of the Borough of Brooklyn designated you for appointment to the Industrial Development Agency. Your appointment is for the remainder of a three-year term that commenced on December 10, 2001 and that expires on December 9, 2004.

On behalf of the people of New York City, I send my thanks and congratulations to you.

Sincerely,

[Handwritten signature of Michael R. Bloomberg]
Michael R. Bloomberg
Mayor

MRS: [unclear]


cc: Honorable Mary Mackowitz
Andrew Alper, DA Chair

CERTIFICATE AS TO APPOINTMENT
as a member of the
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
for filing with the
SECRETARY OF STATE OF
THE STATE OF NEW YORK

This is to certify that RAFAEL A. SALABERRIOS has been appointed, as of February 10, 2004, as a MEMBER of the NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, which has been duly established by Chapter 1082 of the Laws of 1974, as amended.


MICHAEL R. BLOOMBERG
Mayor

New York, New York
Dated: February 6, 2004


VICTOR L. ROBLES
City Clerk, Clerk of the Council

New York, New York
Dated: Feb 12, 2004

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

FEB 20 2004

MISCELLANEOUS
& STATE RECORDS

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED:



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
New York, NY 10007

March 3, 1987

Mr. Bernard Haber
20-25 21st Street
Bayville, New York 11716

Dear Mr. Haber:

It is with great pleasure that I notify you of your appointment to the Board of Directors of the Industrial Development Agency, effective immediately as a Director of the New York City Industrial Development Agency.

The Industrial Development Agency plays a key role in the financing of development projects in the City of New York. With the changes in Federal Tax Law as well as the on-going competition of policy issues, I am confident that your presence on the Board will contribute to thoughtful consideration and resolution of these issues, which are of great concern to me.

Economic development is a priority of my Administration and I am pleased to know that your background and skills will have an important role in our continuing efforts to invigorate the City's economy through a comprehensive program.

Sincerely,


Edward L. Koch
MAYOR



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

February 21, 2007

Mr. Kevin Doyle
260 Riverside Drive, Apt. 10A
New York, New York 10025

Dear Mr. Doyle:

Following your designation by the Manhattan Borough President, and pursuant to the authority vested in me as Mayor by Section 917 of the General Municipal Law of the State of New York, I am pleased to appoint you as a member of the New York City Industrial Development Agency (IDA).

Your appointment is effective immediately and is for the remainder of a three-year term expiring on November 20, 2009.

On behalf of the people of New York City, I extend my thanks and congratulations to you. I am grateful you have agreed to share your time and experience with the IDA Board, and I wish you the very best.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg".

Michael R. Bloomberg
Mayor

MRB:jc

cc: Borough President Scott Stringer
Robert Lieber, EDC President
Meredith Jones, EDC General Counsel

AGENCY GENERAL CERTIFICATE

We, the undersigned Executive Director and an Assistant Secretary of New York City Industrial Development Agency (the "Agency"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York, HEREBY CERTIFY as follows (all capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease Agreement referred to herein):

1. The following persons are the members of the Agency, holding the offices, if any, set forth opposite their names:

[Vacant]	Chairman
Derek B. Park	Vice Chairman
Daniel L. Doctoroff	Deputy Mayor for Economic Development and Rebuilding of The City of New York (ex officio)
Michael A. Cardozo, Esq.	Corporation Counsel of The City of New York (ex officio)
William C. Thompson, Jr.	Comptroller of The City of New York (ex officio)
Amanda M. Burden	Chairperson of the City Planning Commission of The City of New York (ex officio)
Albert V. DeLeon	
Joseph I. Douek	
Kevin Doyle	
Bernard Haber	
Rafael A. Salaberrios	
Robert D. Santos	

Maureen Babis is the Executive Director of the Agency.

The office of Deputy Executive Director of the Agency is currently vacant.

Meredith J. Jones, Esq. is the General Counsel of the Agency.

Jason Wright is the Chief Financial Officer of the Agency.

Richard E. Marshall, Esq. is the Vice President for Legal Affairs of the Agency.

Deo Singh is the Treasurer of the Agency.

Christopher Malin is the Assistant Treasurer of the Agency.

2. That attached hereto is a true and correct copy of the bylaws of the Agency as in effect on the date hereof, and that said copy has been compared by us with the original thereof on file in the Minute Book of the Agency and that said copy is a correct copy thereof and of the whole of said bylaws, and that the same has not been altered, amended or repealed, but is in full force and effect.

3. That attached hereto is a true, correct and complete copy of the notices of the meetings of the Agency held on June 12, 2007 and on July 23, 2007, which notices were given pursuant to the bylaws of the Agency and duly sent to each member of the Agency, all in accordance with the applicable provisions of the Agency's bylaws.

4. That attached to the Record of Proceedings (being those documents delivered on the date hereof referred to below (the "Record of Proceedings") is a true, correct and complete copy of each of the Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the Agency and 128 44th Realty Holding LLC (the "Lessee"); the Company Lease Agreement, dated as of August 1, 2007 (the "Company Lease"), between the Lessee and the Agency; the Guaranty Agreement, dated as of August 1, 2007, from the Lessee, Barone Steel Fabricators, Inc. (the "Sublessee"), Bar Fab Steel Corp. ("the Corporate Guarantor) and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency; a certain Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 29, 2007, from the Agency and the Lessee to SI Bank & Trust (Sovereign Bank) (the "Bank") and a certain Bridge Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 29, 2007 from the Agency and the Lessee to the Bank (each of the documents and agreements referred to above in this paragraph 4 being, collectively, the "Agency Documents"), each of which was duly approved and authorized by the members of the Agency by a resolution on July 23, 2007, and each of which was executed and delivered by the officers of the Agency authorized to do so, and that none of the Agency Documents has been modified, supplemented, amended, rescinded, repealed or canceled, but each continues in full force and effect.

5. That attached hereto is a true, correct and complete copy of the Resolutions duly adopted by the Agency on June 12, 2007 and on July 23, 2007 (the "Resolutions"), accepting the application of the Sublessee for processing and undertaking a straight-lease transaction for the Project, and (1) authorizing financial assistance in the form of a straight-lease transaction for the acquisition and renovation of the Facility, the leasing of the Facility Realty to the Agency and the subleasing of the Facility Realty to the Lessee; (2) authorizing the execution and delivery of the Agency Documents; and (3) approving other matters in connection therewith.

6. That the Resolutions were duly adopted at meetings of the Agency duly called and held on June 12, 2007 and on July 23, 2007, that a quorum was present and acted throughout each such meeting, and that the Resolutions are in full force and effect and have not been modified or amended, and the form of each of the Agency Documents as approved at the July 23, 2007 meeting is substantially in the form as executed and delivered on the date hereof.

7. The Agency is 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, particularly the Act. The Agency is authorized to provide financial assistance to the Lessee and the Sublessee in accordance with the Act pursuant to a straight-lease transaction for the acquisition and renovation of the Facility by the Lessee, to lease the Facility Realty from the Lessee and to sublease the Facility Realty to the Lessee for further sub-sublease of the Facility Realty to the Sublessee for the purpose of promoting, developing, encouraging and assisting in the acquisition and renovation of an industrial facility and thereby advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their standard of living.

8. The Agency has complied with the provisions of the Act and has full power and authority pursuant to law and the Act to act with respect to all transactions

contemplated by the Resolutions and each of the Agency Documents and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

9. The execution and delivery of each of the Agency Documents, and compliance with the provisions thereof, will not conflict with or constitute on the part of the Agency a violation of the Constitution of the State of New York or a violation of, breach of or default under its bylaws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Agency is a party or by which the Agency is bound, or, to the knowledge of the Agency, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Agency or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities that are required of the Agency for the consummation of the transactions contemplated thereby have been obtained.

10. There is no action, suit, proceeding or investigation at law or in equity, of which the Agency has notice, by or before any court or public agency, nor, to the best knowledge of the Agency, is there any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by any of the Agency Documents, or that in any way would adversely affect the validity of the Agency Documents, the Resolutions or any agreement or instrument to which the Agency is a party and that is used or contemplated for use in consummation of the transactions contemplated by the Lease Agreement.

11. The Agency makes no representation or warranty concerning the financial position or business condition of the Lessee, the Sublessee or any of the Individual Guarantors, nor does it represent or warrant as to the correctness of any statements or representations made or materials furnished by or on behalf of the Lessee, the Sublessee or any of the Individual Guarantors in connection with the Project.

12. No controversy or litigation of any nature of which the Agency has notice is now pending or, to the best knowledge of the Agency, threatened (either in state or Federal courts) against or affecting the Agency restraining or enjoining or questioning or affecting, directly or indirectly, the validity of or the authority for the making and entering into of any of the Agency Documents or any proceedings taken by the Agency with respect to the foregoing, or the organization, creation, corporate existence or powers of the Agency or the title of any of the present officers to the respective offices, or the right or power of the Agency to acquire, renovate or improve the Project or mortgage, assign, lease or sublease the Project property.

13. The seal that has been impressed upon this certificate is the legally adopted, proper and only official corporate seal of the Agency.

14. To the best knowledge of the Agency, each of the representations, warranties and covenants of the Agency set forth in Section 1.3 of the Lease Agreement is true and correct in all material respects as of the date hereof as if such representations, warranties and covenants were made as of the date hereof, and the Agency has complied with all of the terms of the Lease Agreement to be complied with by the Agency on or prior to the date hereof.

15. The copies of each of the Agency Documents being delivered this day are true, correct and complete copies of such documents as executed, and attached hereto is a true, correct and complete copy of the Resolutions as adopted, and neither the Agency Documents nor the Resolutions have been further modified, amended or rescinded as of the date hereof.

16. The Agency Documents and any and all other agreements and documents required to be executed and delivered by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement have each been duly authorized, executed and delivered by the Agency, and, as of the date hereof, each is in full force and effect, and each constitutes the valid, binding and enforceable obligation of the Agency, and the Agency is entitled to the benefits of the same.

17. To the best knowledge of the Agency, no legislation, ordinance, rule or regulation has been enacted or introduced or favorably reported for passage by any governmental body, department or agency of the State of New York or of The City of New York, and no decision by any court of competent jurisdiction of such State or City has been rendered that would adversely affect the exemption from all taxation (except for transfer and estate taxes) in the State of New York or The City of New York of the Agency or of any similar body and all properties owned by it or by such similar body.

18. With respect to each of the Agency Documents, we further certify that we have made a careful inquiry of each member, officer and employee of the Agency having the power or duty to (a) negotiate, prepare, authorize or approve any of the Agency Documents or authorize or approve payment thereunder, (b) audit bills or claims under any of the Agency Documents, or (c) appoint an officer or employee who has any of the powers or duties as set forth above, as to whether or not such member, officer or employee has an interest (as defined pursuant to Article 18 of the General Municipal Law) in any of the Agency Documents, and, upon information and belief, as a result of such inquiry, no such member, officer or employee has any such interest in any of the Agency Documents.

19. Attached hereto is a true, correct and complete copy of (i) the notice of public hearing published on May 8, 2007 in the *New York Post* in compliance with Section 859-a of the New York State Industrial Development Agency Act, (ii) a transcript of the hearing so held on June 7, 2007, and (iii) notice of such hearing given to the Mayor of The City of New York.


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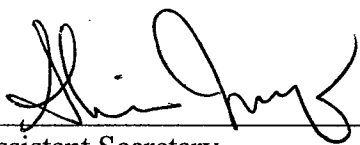
WE FURTHER CERTIFY that on the date or dates of the execution of each of the Agency Documents, and on the date hereof, we are the duly appointed and qualified incumbents of the offices of the Agency set forth below our respective names, and the signatures appearing above our respective names are our signatures.

IN WITNESS WHEREOF, the undersigned have hereunto set their official signatures and the corporate seal of the Agency this August 29, 2007.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

(SEAL)

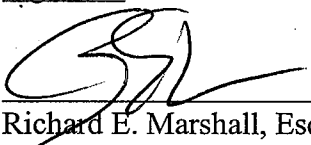
By: 
Maureen P. Babis
Executive Director

By: 
Assistant Secretary

I HEREBY CERTIFY that the signatures of the officers of New York City Industrial Development Agency that appear above are true and genuine, and that I know said officers and know them to hold the offices set opposite their names.

Signature

Title


Richard E. Marshall, Esq.

Vice President for Legal Affairs
New York City Industrial Development Agency

**BY-LAWS OF NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to the authority contained in Section 858, Title I of Article 18-A of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, and Section 917 of the General Municipal Law as set out in Chapter 1082 of the Laws of 1974 of the State of New York, the New York City Industrial Development Agency hereby approves the following by-laws for the regulation of its activities:

**ARTICLE I
The Agency**

Section 1.1. Description. The New York City Industrial Development Agency (the "Agency") is a corporate governmental agency of the State of New York, constituting a body corporate and politic and a public benefit corporation, created by and having the powers and functions set forth in the General Municipal Law, Article 18-A, and Section 917 thereunder (collectively referred to as the "Act").

Section 1.2. Membership. The membership of the Agency shall consist of fifteen members, who shall constitute the Board of Directors (the "Board") and shall be selected and shall hold office as provided in the Act.

Section 1.3. Offices. The principal office of the Agency shall be located in the City, County and State of New York. The Agency may also have other offices at such places within the State of New York as it may from time to time designate by resolution.

Section 1.4. Seal. (1) The official seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its creation. Such seal may also include such other insignia as may be approved by the Board.

(2) In the execution on behalf of the Agency of any instrument, document, writing, notice or paper it shall not be necessary to affix the official seal of the Agency thereon, and any

such instrument, document, writing, notice or paper when executed without said seal affixed thereon shall be of the same force and effect and as binding on the Agency as if said official seal had been affixed thereon in each instance.

(3) The official seal need not be impressed on any instrument, document, writing, notice or paper, but the same shall be sufficiently sealed if the official seal or a facsimile thereof is engraved, imprinted or otherwise reproduced thereon.

(4) The Secretary or the Executive Director, or in the absence of the Secretary or the Executive Director, the Chairman may certify as to the official seal or its facsimile as of any date or with respect to any instrument, document, writing, notice or paper and any such certification shall be conclusive as to the form of said official seal and that any such instrument, document, writing, notice or paper has been duly and properly sealed by the Agency.

Section 1.5. Fiscal Year. The fiscal year of the Agency shall begin on the first day of July in each calendar year and shall end at the close of business on the 30th day of June in the following calendar year.

ARTICLE II Officers

Section 2.1. Appointment. The officers of the Agency shall be a Chairman and a Vice-Chairman, who shall be members, and an Executive Director, Treasurer, Secretary, Assistant Treasurers and such other officers as it may be determined by the Board, who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the Board, except the Chairman, who shall be designated by the Mayor of The City of New York.

Section 2.2. Terms of Office. All officers of the Agency other than the Chairman, shall hold office at the pleasure of the Board. The Chairman shall serve as such at the pleasure of the Mayor of The City of New York as provided in the Act.

Section 2.3. Chairman. The Chairman shall preside at all meetings of the Agency, but, for any particular meeting of the Agency, the Chairman may delegate the responsibility to so preside to any member or officer of the Agency. He shall sign by manual or facsimile signature and execute on behalf of the Agency all agreements, deeds, contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by resolution of the Agency, and shall perform such other duties as may be prescribed for him by law or by the Agency. The Chairman shall submit to the Board such recommendations and information as he may consider proper concerning the business, affairs and polices of the Agency.

Section 2.4. Vice-Chairman. The Vice-Chairman, during the absence or disability of the Chairman, shall have all the powers and perform all the duties of the Chairman. The Vice-Chairman shall also perform such other duties as the Board shall prescribe or designate. In case of the resignation or the death of the Chairman, the Vice-Chairman shall perform such duties as are imposed on the Chairman until such time as the Mayor of The City of New York designates a new Chairman.

Section 2.5. Secretary. The Secretary shall record all the votes and record the minutes of the Agency in a journal to be kept for that purpose; attend to the serving of notices of all meetings when required; shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required and may certify by manual or facsimile signature to the seal of the Agency or its facsimile; shall perform all duties as the Agency may designate.

Section 2.5(1). Assistant Secretary. The Assistant Secretary shall exercise such powers and perform such duties as from time to time may be assigned to him by the Board. At the request of the Secretary or in his absence or disability, the Assistant Secretary shall perform all the duties of the Secretary and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Secretary.

Section 2.6. Treasurer. The Treasurer shall be the chief financial officer of the Agency and shall exercise general supervision over the receipt, custody and disbursement of all Agency funds and securities, except as otherwise provided by resolution and shall cause the same to be deposited forthwith in

the name of the Agency in such bank or banks as the Board may designate.

The Treasurer shall sign all instruments of indebtedness, orders and checks for the payments of moneys by the Agency pursuant to the direction of the Board, unless otherwise authorized by resolution of the Board. Except as otherwise authorized by resolution of the Board, all such instruments of indebtedness, orders and checks shall be countersigned by the Chairman, Vice-Chairman or Executive Director.

The Treasurer shall have charge of the treasury and supervision of receipts, deposits and disbursements of all Agency moneys. He shall cause to be maintained full and accurate and separate accounts of the various funds and moneys under his supervision. The Treasurer shall at a reasonable time exhibit the said books and accounts showing all receipts and expenditures, to any member of the Agency during business hours and he shall cause to be rendered an accounting of the current financial condition of the Agency at each regular meeting and a full financial report at each annual meeting covering the Agency's prior fiscal year. He shall have such other powers and duties as are conferred upon him by the Board or by any special or general law.

Section 2.7. Assistant Treasurer. The Assistant Treasurer shall exercise such powers and perform such duties as from time to time may be assigned to him by the Board. At the request of the Treasurer or in his absence or disability, the Assistant Treasurer shall perform all the duties of the Treasurer and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Treasurer.

Section 2.8. Executive and other Committees. The Board may by resolution passed by a majority of the members of the Board then in office, designate an Executive Committee which to the extent provided in such resolution shall have all the authority of the Board which may be delegated and shall have and exercise such powers of the Board in the management of the business and affairs of the Agency and may authorize the seal of the Agency to be affixed to all papers which may require it. The Executive Committee may consist of the Chairman of the Board, Vice-Chairman, the Secretary, the Treasurer, the Assistant Secretary and Deputy Mayor/Administrator of the Economic Development Administration, his or her representative, or such other or additional persons

designated by resolution of the Board. The Board may by resolution designate other committees of the Board each to consist of at least three members which to the extent provided in such resolution shall have the authority of the Board which may be delegated. The Board may by resolution designate members to act as alternative members of any committee, other than the Executive Committee, to replace absent members at meetings of the Committee. The Board may establish a Chairman of the Executive Committee with such powers, duties or responsibilities as are imposed pursuant to the resolutions of the Board or Executive Committee. The Executive Committee shall keep minutes of all proceedings and report such minutes to the Board when required. Each other committee shall keep such minutes to carry out its delegated duties and to report thereon to the Board.

Section 2.9. Other Officers. All other officers of the Agency shall perform such duties pertaining to their respective offices as may be assigned to them from time to time by the Board or the Chairman. Such other officers who are not members shall receive such compensation as may be authorized by the Board.

Section 2.10. Officers Holding Two or More Offices. Any two or more offices may be held by the same person, except as otherwise provided by Law. No officer shall execute or verify any instrument in more than one capacity if such instrument be required by law or otherwise to be executed or verified by any two or more officers.

Section 2.11. Duties of Officers may be Delegated. In case of the absence or disability of any officer of the Agency, or in the case of a vacancy in any office or for any other reason that the Board or the Chairman may deem sufficient, the Board or the Chairman, except as otherwise provided by law or these By-Laws, may delegate, for the time being, the powers or duties of any officer to any other officer or to any member.

Section 2.12. Executive Director. The Executive Director shall be the chief executive officer and shall be appointed by the Board by a two-thirds vote of the members of the Board then in office and shall be responsible for the administration of its affairs. He shall be the general manager of the Agency. He shall exercise supervision and control of all administrative functions of the Agency. He shall be responsible for the implementation of all resolutions, orders, programs or

projects of the Agency. He shall act for and in place of any absent officer or employee of the Agency, except the Chairman, Vice-Chairman, Secretary or Treasurer of the Agency. The Executive Director, as well as the Chairman, shall have the power to sign and execute on behalf of the Agency all contracts, notes, bonds or other evidence of indebtedness and to affix and attest to the seal of the Agency when so authorized by resolution of the Agency. He shall attend all meetings of the Agency with the right to take part in the discussion and to recommend such measures as he may deem necessary or expedient, and shall perform such other duties and have such other powers as may be prescribed for him by law of the Board. He shall have all necessary incidental powers to perform and exercise any of the duties and functions specified above or lawfully delegated to him.

Section 2.12(1). Deputy Executive Director. The Deputy Executive Director shall be appointed by the Board by a majority vote of the members of the Board. At the request of the Executive Director or in his absence or disability, the Deputy Executive Director shall perform all the duties of the Executive Director and when so acting shall have the powers of and shall be subject to all the restrictions upon the Executive Director.

Section 2.13. Additional Duties. The Officers of the Agency shall perform such other duties and functions as may, from time to time, be required by the Board, by its By-Laws, or its rules and regulations.

Section 2.14. Additional Personnel. The Board may appoint such other officers and employees as the Agency may require for the performance of its duties, and fix and determine their qualifications, duties and compensation. The Board may also appoint counsel, fixing compensation for services, which, if permitted by law, shall be payable in addition to other official compensation, and may retain and employ private consultants for professional and technical assistance and advice.

Section 2.15. Compensation of Members. Members shall receive no compensation for their services as members. The Board may by resolution provide for reimbursement of all necessary expenses, including travel expenses incurred in the discharge of their duties as members.

Section 2.16. Removal of Officers. Any officer appointed by the Agency shall serve at the pleasure of the Board. The Executive Director may be removed by a two-thirds vote of the members of the Board then in office at a meeting providing notice thereof; all other officers may be removed upon a vote of a majority of the Board then in office at a meeting providing notice thereof.

Section 2.17. General Counsel. The General Counsel shall be appointed by the Board by a majority vote of the members of the Board present at such meeting. The General Counsel shall provide legal representation in connection with all of the Agency's proceedings and activities, and shall perform all the duties as the Agency may designate.

ARTICLE III Meetings

Section 3.1. (a) Annual Meeting. The Annual Meeting of the Board shall be held on the second Tuesday in November of each year or such earlier or later date in each calendar year as may be designated in the notice or waiver of notice of such meeting.

(b) Regular Meetings. Regular meetings of the Board for the transaction of any lawful business of the Agency shall be held on the second Tuesday in each month at such time and place as designated in a notice to be given to the members by the Chairman, Vice-Chairman or Executive Director; except that no meeting shall be held in the month of August and the meeting to be held in the month of July shall be held on the fourth Tuesday of that month. When any regular meeting of the Board falls upon a holiday observed by the Agency, the meeting of the Board shall be held upon such other day as the members may previously designate by resolution, and if no such day is designated the meeting shall be held at the same hour on the next Tuesday following the said holiday or holidays. Any regular meeting of the Agency may be dispensed with by appropriate resolution adopted by the members at any prior meeting of the Board, or by an appropriate resolution adopted by the members at a special meeting held in lieu of a monthly regular meeting.

Section 3.2. Special Meetings. The Chairman, may, when he deems it desirable, and shall upon a written request of three members, call or direct the Executive Director to call a special meeting of the Board for the purpose of transacting any business designated in the notice, or a written agenda accompanying the notice. At such special meeting, no business shall be considered other than as designated in the notice, but if all members of the Board are present at a special meeting, with or without notice thereof, and all are agreeable thereto, any and all business may be transacted at such special meeting.

Section 3.3. Notice. Notice of the time and place of each meeting of the Agency shall be given to each member by mail at least five calendar days before such meeting or personally or by telegram or cable at least twenty-four hours before such meeting. Except as otherwise provided in Article IV, relating to the amendment of these By-Laws, Section 2.16, relating to removal of officers, and in Section 3.2 relating to special meetings, such notice need not specify the matters to be considered at the meeting. Notices by mail shall be deemed to have been given when mailed to each member at his address appearing on records of the Agency, and notices by telegram or cable shall be deemed to have been given when presented for transmission to an office of the telegram or cable company, addressed as in the case of notices by mail.

Section 3.4. Waiver of Notice. Notice of any meeting of the Agency need not be given to a member if waived in writing by him either before or after such meeting, or if he shall be present at such meeting. No notice need be given of any meeting if all the members then in office shall be present thereat. Notice of an adjourned meeting need not be given to any member present at the time of the adjournment.

Section 3.5. Quorum and Notice. A majority of the members shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Board and, except as otherwise provided in these By-Laws or by any special or general law, any act taken by vote of a majority of those present at any meeting at which a quorum is present shall be the act of the Board. A majority of the members present at any meeting, whether or not constituting a quorum, may adjourn the meeting to another time and place.

Section 3.6. Order of Business. At the regular meeting of the Board, the following shall be the order of business:

1. Roll Call
2. Reading and approval of minutes of previous meeting
3. Reports of the Treasurer
4. Bond Resolutions
5. Reports of Committees
6. Inducement Resolutions
7. Unfinished Business
8. New Business
9. Adjournment

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

The foregoing order of business may be changed or modified at any regular meeting by a resolution of the members made immediately following the roll call or prior to such meeting by service upon each member of a written agenda with the notice of meeting provided in Section 3.3. of this Article.

Section 3.7. Certification of Instruments. Each officer of the Agency shall have the authority, when necessary or appropriate, to certify the records, proceedings, rules and regulations, and other instruments of the Agency and to affix and attest to the official seal of the Agency on contracts and other instruments of the Agency.

Section 3.8. Action by Written Consent of Members. Any action required or permitted to be taken by the Board, other than adoption of a bond resolution or an inducement resolution, or any action required or permitted to be taken by any committee of the Board may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

Section 3.9. Action Taken by Telephone Communications. Any action required or permitted to be taken by the Board, other than adoption of a bond resolution or in inducement resolution, or any action required or permitted to be taken by any committee

thereof may be taken when any one or more members of the Board or any committee thereof participates in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV By-Laws

Section 4.1. Amendments. These By-Laws may be amended, supplemented or repealed by majority vote of the members then in office at any meeting of the Board if either all the members then in office are present at such meeting or notice of the proposed amendment, supplement, or repeal shall have been included in the notice or waiver of notice of such meetings.

ARTICLE V Policies and Procedures

Section 5.1. The Agency by resolution may adopt such rules, regulations, policies, and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these By-Laws as they may be amended from time to time.

Section 5.2. Audit of Records and Accounts. (1) The Agency shall annually secure a certified audit by accountants designated by the Board of its financial records and accounts in its possession and under its supervision and shall file a copy of such certified audit with the Mayor, and upon request, with the Council of the City of New York, within one-hundred and twenty days after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year.

(2) The Board may authorize any other operating statement which it may determine is required for its operation.

ARTICLE VI Miscellaneous Provisions

Section 6.1. Indemnification. The Agency shall, to the fullest extent permitted by law, indemnify any person made or threatened to be made, a party to any action or proceeding, other than a criminal action, by reason of the fact that such person, his testator or intestate, was a director or an officer or employee of the Agency or served at the request of the Agency, as a director or an officer or employee of any subsidiary of the Agency, against judgments, fines, amounts paid in settlement and reasonable expenses, including, attorneys' fees, actually and necessarily incurred as a result of such action or proceeding (including any appeal therein), providing (a) such director, officer or employee acted in good faith for a purpose which he reasonably believed to be in the best interests of the Agency and (b) it is not determined in any action or proceeding that such director, officer or employee acted without reasonable cause to believe that this conduct was lawful, and (c) such person, his testator or intestate, shall have first exhausted all the rights and remedies granted, and shall have satisfied all the obligations imposed by subdivision (1) of Section 917 of the General Municipal Law as set out in Chapter 958 of the Laws of 1977 of the State of New York.

Resolution inducing the financing of a commercial facility for
Barone Steel Fabricators, Inc. as an Industrial Incentive Program
(Straight-Lease) Transaction

WHEREAS, New York City Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, civic, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Barone Steel Fabricators, Inc. (the "Applicant") has entered into negotiations with officials of the Agency for the acquisition and renovation of a commercial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Applicant in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area, for lease to the Agency by a to be formed real estate holding company affiliated with the Applicant (the "Company"), and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$5,700,000 (the "Project"); and

WHEREAS, the Applicant has submitted a Project Application (the "Application") to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant is currently located at two sites in Sunset Park, Brooklyn and employs approximately 46 full time equivalent employees within The City of New York (the "City"); that the present facilities of the Applicant are inadequate to permit the Applicant to expand its operations; that the Applicant must look to expand its operations to remain competitive; that the Applicant has investigated alternative facilities located in New Jersey but would prefer to remain within the City; that the Applicant expects to employ approximately 4 additional full time equivalent employees within the three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby remain and expand its operations in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project and remain and expand its operations in the City; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of an Industrial Incentive Program (Straight-Lease) transaction between the Agency and the Applicant and the Company are necessary to induce the Applicant to remain and expand its operations within the City; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a straight-lease transaction, which cannot be immediately accomplished; and

WHEREAS, in order to provide financial assistance to the Applicant and the Company for the acquisition and renovation of the Facility, the Agency intends to grant the Applicant and the Company financial assistance through an Industrial Incentive Program (Straight-Lease) transaction in the form of real property tax abatements, mortgage recording tax exemptions and sales tax exemptions all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and renovation of the Facility and the provision by the Agency of financial assistance to the Applicant and the Company pursuant to the Act in the form of an Industrial Incentive Program (Straight-Lease) transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant and the Company to proceed with the Project. The Agency further determines that

(a) the Project shall not result in the removal of any facility or plant of the Applicant or the Company or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or the Company or any other occupant or user of the Facility located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York; and

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant and the Company for the Project, an Industrial Incentive Program (Straight-Lease) transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant and the Company to assist in the Project.

Section 4. The Agency hereby authorizes the Applicant and the Company to proceed with the Project as herein authorized. The Applicant and the Company are authorized to

proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant and the Company that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant and the Company are hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Applicant or the Company for such purpose.

Section 5. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 6. This Resolution is subject to approval based on an investigative report with respect to the Applicant and the Company. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 5 hereof).

Section 7. The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act ("SEQRA") (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This determination is based upon the Agency's review of information provided by the Applicant and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency has determined that the Project, an unlisted action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared for the Project. The reasons supporting this determination with respect to the Project are as follows:

- (1) the Project will not result in a substantial adverse change in existing air quality, traffic or noise levels;
- (2) the Project will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;
- (3) the Project will not result in the creation of a hazard to human health; and
- (4) no other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 8. In connection with the Project, the Agency intends to grant the Applicant and the Company real property tax abatements, mortgage recording tax exemptions and sales tax exemptions.

Section 9. This Resolution shall take effect immediately

ADOPTED: ~~June~~^{July} 12, 2007

Accepted: _____, 2007

BARONE STEEL FABRICATORS, INC.

By: WJ Barone
Name:
Title: President

Resolution Authorizing and Approving the Execution and Delivery of Agreements in Connection with the Industrial Incentive Program (Straight-Lease) Project for Barone Steel Fabricators, Inc.

WHEREAS, the New York City Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, civic, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Barone Steel Fabricators, Inc. (the "Applicant") has entered into negotiations with officials of the Agency for the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use by the Applicant in its business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area, for lease to the Agency by a to be formed real estate holding company affiliated with the Applicant (the "Company"), and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$5,700,000 (the "Project"); and

WHEREAS, on June 12, 2007, the Agency adopted a resolution approving the taking of preliminary action with respect to providing financial assistance in the form of a Industrial Incentive Program (Straight-Lease) transaction; and

WHEREAS, in order to finance a portion of the costs of the Project, (i) SI Bank & Trust (Sovereign Bank) (such financial institution, or any other financial institution as may be approved by a certificate of determination of an Agency officer, the "Bank") has agreed to enter into a loan arrangement with the Company pursuant to which the Bank will lend approximately \$2,915,000 to the Company, and the Agency and the Company will grant a mortgage on the Facility to the Bank (the "Initial Bank Mortgage"), and the Bank will fund a bridge loan in the approximate amount of \$1,945,000 (the "Bridge Loan") to the Company, and the Company will grant a mortgage on the Facility to the Bank (the "Bridge Mortgage", and together with the Initial Bank Mortgage, the "Original Bank Mortgage"), and (ii) Empire State Certified Development Corporation ("ESCDC") has agreed to enter into a loan arrangement with the Company pursuant to which ESCDC will lend approximately \$1,945,000 to the Company to refinance the Bridge Loan, and the Company will grant a subordinate mortgage on the Facility to ESCDC (the "ESCDC Mortgage"); and

WHEREAS, in order to provide financial assistance to the Company for the Project, the Agency intends to grant the Company financial assistance through an Industrial Incentive Program (Straight-Lease) transaction in the form of real property tax abatements and

exemptions, sales tax exemptions and mortgage recording tax exemptions, all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, HEREBY RESOLVES AS FOLLOWS:

Section 1. To accomplish the purposes of the Act and to provide financial assistance to the Company for the financing of the acquisition and renovation of the Facility, an Industrial Incentive Program (Straight-Lease) transaction is hereby authorized subject to the provisions of this Resolution and the Lease Agreement hereinafter authorized.

Section 2. The execution and delivery of a Company Lease Agreement from the Company leasing the Facility to the Agency, a Lease Agreement from the Agency subleasing the Facility to the Company (the "Lease Agreement") (for sub-sublease to the Applicant), a Sales Tax Letter from the Agency to the Company and the Applicant, the Initial Bank Mortgage, the ESDC Mortgage, and a Guaranty Agreement from the Company, the Applicant and the Applicant's and the Company's owners and/or principals in favor of the Agency (the "Guaranty Agreement") (each document referenced in this Section 2 being, collectively, the "Agency Documents"), each being substantially in the form approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 3. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 4. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute

and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

Section 5. This Resolution shall take effect immediately.

ADOPTED: July 23, 2007

June 4, 2007

To the Members of the Board of Directors and their Alternates:

- Amanda M. Burden
- Michael A. Cardozo
- Albert V. DeLeon
- Barry Dierstein
- Daniel S. Doctaroff
- Joseph Dusek
- Kevin Doyle
- John Graham
- Bernard Haber
- Derek Park
- Rafael Salazar
- Robert D. Santos, Esq.
- Angela Shin
- William C. Thompson, Jr.
- Leonard Wasserman, Esq.

A meeting of the Board of Directors of the New York City Industrial Development Agency (the "Agency") will be held at 9:00 a.m. on Tuesday, June 12, 2007, at the offices of the New York City Economic Development Corporation ("NYCEDC"), 4th Floor Conference Room, 110 William Street, New York, New York. Please confirm your attendance by calling Fran Tulano at (212) 312-2598.

As required by law, the Agency has already held and will hold public hearings on projects to be presented at this Board meeting. The next public hearing is at 10 a.m. on Thursday, June 7, 2007, at the offices of the NYCEDC. Applications and related information to be discussed at this hearing were made available starting Friday, June 1, 2007. Please notify David Shelley at (212) 312-3581 if you are interested in obtaining any background material on any projects being presented at these hearings. You are of course welcome to attend the hearings. In any event, we will send to you in advance of the Board meeting a summary of any issues raised and a copy of any written testimony submitted during the hearings with respect to projects on the agenda.

Following the June Board meeting, the Agency's next public hearing will take place at 10:00 a.m. on Thursday, July 19, 2007, and the date for the next Board meeting is proposed to be Monday, July 23, 2007.

We look forward to seeing you on June 12, 2007.

Sincerely,

Kai Hayashi
Executive Director

NOTICE OF MEETING OF THE BOARD OF DIRECTORS

A meeting of the Board of Directors of the New York City Industrial Development Agency will be held at 9:00 a.m. on Tuesday, June 12, 2007 at the offices of the New York City Economic Development Corporation, 4th Floor Conference Room, 110 William Street, New York, New York.

- A. Minutes of the April 11, 2007 Meeting
- B. Minutes of the May 8, 2007 Meeting
- C. Fiscal Year 2008 Budget
- D. Officer Appointment
- E. July Board Meeting Resolution
- F. Interim Financial Statements (April 2007)
- G. New Transaction Resolutions
 - a. 88 Trading Corp.
 - b. Barone Steel Fabricators, Inc.
 - c. Bros Zion Bobov, Inc.
 - d. Congregation Lev Bais Yaakov
 - e. The Gateway School of New York
 - f. Tuoro College
- H. Additional Resolutions
 - a. Ates Print and Packaging Corporation
 - b. Citigroup Inc.
 - c. Continental Food Products, Inc.
 - d. NBC Universal
 - e. News America Publishing Incorporated
- I. Other Items for Consideration
 - a. Item Regarding Proposal for Purchase Contract for Business Development Study
- J. Progress Report
- K. Definitions

Kai Hayashi
Executive Director

July 13, 2007

To the Members of the Board of Directors and their Alternates:

Amanda M. Burden
Michael A. Cardozo
Albert V. De Leon
Barry Dinerstein
Daniel L. Doctoroff
Joseph Douek
Kevin Doyle
John Graham
Bernard Haber
Derek Park
Rafael Salaberrios
Robert D. Santos, Esq.
Angela Sun
William C. Thompson, Jr.
Leonard Wasserman, Esq.

A meeting of the Board of Directors of the New York City Industrial Development Agency (the "Agency") will be held at 9:00 a.m. on Monday July 23, 2007, at the offices of the New York City Economic Development Corporation ("NYCEDC"), 4th Floor Conference Room, 110 William Street, New York, New York. Please confirm your attendance by calling Fran Tufano at (212) 312-3598.

As required by law, the Agency has already held or will hold public hearings on projects to be presented at this Board meeting. The next public hearing is at 10 a.m. on Thursday, July 19, 2007, at the offices of the NYCEDC. Applications and related information to be discussed at the July hearings were made available starting Friday, July 13, 2007. Please notify David Shélley at (212) 312-3581 if you are interested in obtaining any background material on any projects being presented at these hearings. You are of course welcome to attend the hearings. In any event, we will send to you in advance of the Board meeting a summary of any issues raised and a copy of any written testimony submitted during the hearings with respect to projects on the agenda.

Following the July Board meeting, the Agency's next public hearing will take place at 10:00 a.m. on Thursday, September 6, 2007 and the date for the next Board meeting is proposed to be Tuesday September 11, 2007.

One of the items in the Board book relates to the appointment of a new executive director for the Agency. This spring, I made the decision to resign from the NYCEDC in order to spend more time with my family. I regret that I will be on vacation during the July Board meeting, what would have been my last meeting, and so therefore would like to take this opportunity to thank you, the Board and alternates, and all of my NYCEDC colleagues for providing me with so much opportunity and support over the years. You are left in excellent hands – the leadership and staff at NYCEDC are exemplary in their capabilities, creativity and enthusiastic for the important work of the Agency, and I have no doubt, they will be able to guide the Agency through any future challenges and to many future successes!

We look forward to seeing you on July 23, 2007.

Sincerely,



Kei Hayashi
Executive Director

NOTICE OF MEETING OF THE BOARD OF DIRECTORS

A meeting of the Board of Directors of the New York City Industrial Development Agency will be held at 9:00 a.m. on Monday, July 23, 2007 at the offices of the New York City Economic Development Corporation, 4th Floor Conference Room, 110 William Street, New York, New York.

Minutes of the June 12, 2007 Meeting

Interim Financial Statements (May 2007)

Officer Appointment

New Transaction Resolutions

- a. DCD Marketing LLC
- b. Excellent Poly, Inc.
- c. Mind, Hand & Company, Inc. / J.V. Woodworking Inc. / OH-Show Woodworking Studio
- d. Safe Art SAT, Inc.

New Transaction Resolutions – Civic Facilities

- a. Lower East Side Tenement Museum
- b. Lycee Francais de New York
- c. The Nightingale-Bamford School
- d. Special Needs Facilities Pooled Program Round XIII
 - Community Resource Center for the Developmentally Disabled, Inc.
 - Creative LifeStyles, Inc.
 - Human Care Services for Families & Children, Inc.
 - SUS – Development Disabilities Services, Inc.
 - Young Adult Institute, Inc.

Additional Resolutions

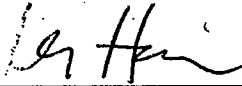
- a. Bank of America Corporation
- b. Barone Steel Fabricators, Inc.
- c. Glass Form Productions, Inc.
- d. Gracious Thyme Catering Inc.
- e. Macy's Group, Inc.
- f. Orion Mechanical Systems, Inc.
- g. Way Fong, LLC

Other Items for Consideration

- a. Item Regarding Proposal for the Payment of fees for Bond Termination Services
- b. Item Regarding Proposal for Purchase Contract for Broadband Feasibility Study
- c. Item Regarding Proposal for Purchase Contract for Manufacturing and Industrial Subsectors Study
- d. Item Regarding Proposal for Purchase Contract for On-Call environmental Planning Services
- e. Item Regarding Proposal for Purchase Contract for Piers 7-12 Development Strategy

Progress Report

Definitions



Kei Hayashi
Executive Director

4/28/07

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
NOTICE OF PUBLIC HEARING

[The main body of the document contains several columns of text that are extremely faint and illegible due to heavy scanning artifacts and noise.]

State of New York
COUNTY OF NEW YORK

SS:

ALYSA CHRISTIAN
being duly sworn,
says that she is the principal Clerk of the Publisher of the

598964

New York Post

a daily newspaper of general circulation printed and published in the English language, in the County of New York, State of New York; that advertisement hereto annexed has been regularly published in the said "NEW YORK POST" since, on the 08 day of May, 2007

Legal Christian

Sworn to before me this 8 day of May, 2007

EVYON STEVENS
Notary Public, State of New York
No. 0197517681
Qualified in New York County
Commission Expires November 7, 2008

Notary Public

SUMMARY OF THE PUBLIC HEARING
of the

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
held on behalf of the New York City Industrial Development Agency
by the New York City Economic Development Corporation
at 110 WILLIAM STREET, NEW YORK, NEW YORK

on June 7, 2007 10:05 A.M.

This summary pertains to a public hearing called by the Mayor of the City of New York and the New York City Industrial Development Agency (the "Agency") pursuant to Section 147(b) of the Internal Revenue Code and Section 89(b) of the General Municipal Law of the State of New York on each of the proposed projects described in a public notice published in The New York Post on May 8, 2007 and in the City Record on May 23, 2007.

The Agency is empowered under the New York State Industrial Development Agency Act to issue tax-exempt, non-recourse revenue bonds to provide financing and financial assistance for industrial, manufacturing, warehousing, commercial, research and civic projects, and to enter into industrial and small industry incentive (straight-lease) transactions, also to provide financial assistance for the same projects, and thereby advance job opportunities, general prosperity and economic welfare of the people of the City of New York and to improve their prosperity and standard of living.

The Agency has been requested (i) to provide financial assistance to and to make the proceeds of its bonds available for the financing of a number of such projects, and/or (ii) to provide financial assistance through industrial and small industry incentive (straight-lease) transactions, also to a number of such projects. The purpose of today's public hearing is to provide the public with an opportunity to make comments and to raise questions with respect to the proposed projects which are the subject of this public hearing. All statements were to be limited to three minutes. All comments and stated questions presented at this public hearing were summarized herein to record the proceedings of today's public hearing. In addition, at today's hearing and subsequent to the public availability of these documents on or about March 10, 2007, the Agency provided the public with an opportunity to review the project application and the cost-benefit analysis for each of the proposed projects covered by this public hearing today. Copies of the foregoing materials were provided at this public hearing upon request by any attendee. Finally, advice of those persons requesting copies of such materials and those persons and their affiliations in attendance at today's hearing will be annexed to this summary.

The published public notices of this hearing invited written comments from interested persons to be submitted to the Agency at its offices at 110 William Street, New York, New York. The Agency had received no written comments at the time of the hearing. The public notices also requested that any persons desiring to make a brief statement regarding any of the projects provide prior notice thereof to the Agency. The Agency received one such notice.

Mr. Richard Marshall, designated to preside at the hearing, opened the hearing by introducing Agency Staff and Mr. David Shelley who conducted the hearing. Mr. Shelley presented the following projects: 88 Trading Corp., Barone Steel Fabricators, Inc., Bros Zion of Bobov, Inc., Community Resource Center for the Developmentally Disabled, Inc., Creative Lifestyles, Inc., Federated Merchandising Group, The Gateway School of New York, Human Care Services for Families and Children, Inc., Lower East Side Tenement Museum, Margaret Jietz Nursing and Rehabilitation Center, News America Publishing Incorporated, SUS-Developmental Disabilities Services, Inc., Technical Library Services, Inc., Yeshiva Novominsk and Young Adult Institute, Inc. Mr. Shelley asked for public comment on the projects taking such public comment in the order it was received.

Mr. Marshall Cohen spoke in opposition to the Bros Zion of Bobov, Inc. ("Bros Zion") project. Mr. Cohen stated that the authority of the applicant was in question due to an active and ongoing dispute regarding control of the organization. Mr. Cohen stated that the application should be postponed until it is known which party will have the authority to act on behalf of Bros Zion. Mr. Cohen submitted written testimony which is appended hereto.

Mr. Steven Polivy spoke in favor of the project. Mr. Polivy stated that there were no legal actions proceeding against Bros Zion. Mr. Polivy stated that there was no issue regarding title or Bros Zion's authority to proceed with the project. Mr. Polivy stated that the Bros Zion's Board of Directors had full authority to run the school and take action with respect to the project including applying to the Agency for bond financing.

At this point, Mr. Marshall asked if there were any additional testimony to be heard. There being no further statements or submissions, Mr. Marshall declared the hearing on the 88 Trading Corp., Barone Steel Fabricators, Inc., Bros Zion of Bobov, Inc., Community Resource Center for the Developmentally Disabled, Inc., Creative Lifestyles, Inc., Federated Merchandising Group, The Gateway School of New York, Human Care Services for Families and Children, Inc., Lower East Side Tenement Museum, Margaret Jietz Nursing and Rehabilitation Center, News America Publishing Incorporated, SUS-Developmental Disabilities Services, Inc., Technical Library Services, Inc., Yeshiva Novominsk and Young Adult Institute, Inc. projects to be closed.

(10:10 A.M.)



May 8, 2007

BY HAND

Angela Sun
Office of the Deputy Mayor for
Economic Development and Rebuilding
City Hall, 1st Floor
New York, New York 10007

Re: Statutory Notice Concerning Benefits for New
York City Industrial Development Agency
Projects

Dear Ms. Sun:

Enclosed is the notification for the Mayor pursuant to Section 859a of the General Municipal Law of the State of New York, for public hearing with respect to proposed New York City Industrial Development Agency projects providing benefits of more than \$100,000. Such hearing will occur on June 7, 2007.

Please call Richard Marshall at 312-3534 if you have any questions about either the notice or the projects to which it pertains.

Sincerely,

David Shelley
Records Access Officer

Enclosure

Hawkins Delafield & Wood LLP

ONE CHASE MANHATTAN PLAZA
NEW YORK, NY 10005
WWW.HAWKINS.COM

August 29, 2007

Barone Steel Fabricators, Inc.
Brooklyn, New York

SI Bank & Trust (Sovereign Bank)
New York, New York

Ladies and Gentlemen:

We deliver to you herewith a copy of our legal opinion dated the date hereof relating to the straight-lease transaction of the New York City Industrial Development Agency for the benefit of Barone Steel Fabricators, Inc., a New York corporation, and 128 44th Realty Holding LLC, a New York limited liability company.

You are entitled to rely on such opinion as though the same were addressed to you.

Very truly yours,

Hawkins Delafield & Wood LLP

Hawkins Delafield & Wood LLP

ONE CHASE MANHATTAN PLAZA
NEW YORK, NY 10005
WWW.HAWKINS.COM

August 29, 2007

New York City Industrial
Development Agency
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the straight-lease transaction by the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (the "Agency"), for the benefit of Barone Steel Fabricators, Inc., a corporation organized and existing under the laws of the State of New York (the "Sublessee"), and 128 44th Realty Holding LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of New York.

The straight-lease transaction is being entered into in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, located at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

The Project is authorized under and pursuant to 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 the State of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"), and a resolution of the Agency adopted on July 23, 2007 authorizing, among other matters, the execution of the Lease Agreement referred to below.

On the date hereof, the Lessee and the Agency have entered into (i) a Company Lease Agreement, dated as of August 1, 2007 (the "Company Lease"), providing for the leasing of the Facility Realty (as defined in the Lease Agreement) by the Lessee to the Agency; and (ii) a Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), providing for, among other things, the acquisition and renovation of the Project by the Lessee, the subleasing of the Facility Realty by the Agency to the Lessee and providing for certain real estate tax benefits, sales tax and mortgage recording tax exemptions to the Lessee. The Lessee and the Sublessee have entered into a Sublease Agreement, dated as of August 1, 2007 (the "Sublease Agreement"), pursuant to which the Lessee has sub-subleased the Facility Realty in whole to the Sublessee. In addition, the Lessee's obligations under the Lease Agreement, and the Sublessee's

obligations under the Sublease Agreement, have been guaranteed by Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), Bar Fab Steel Corp., a New York Corporation (the "Corporate Guarantor") and by the Lessee and the Sublessee, pursuant to a Guaranty Agreement, dated as of August 1, 2007 (the "Guaranty Agreement"), from the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors to the Agency.

The cost of the Project is being financed in part through (i) a loan in the principal amount of \$2,915,000 made by SI Bank & Trust (Sovereign Bank) (the "First Mortgage") to the Lessee, which loan is to be secured pursuant to a Mortgage, Security Agreement and Assignment of Leases and Rents, dated the date hereof (the "First Mortgage"), from the Agency and the Lessee to the First Mortgagee; (ii) a loan in the principal amount of \$1,945,000 (the "ESCDC Loan") to be made at a future date by Empire State Certified Development Corporation (the "Second Mortgagee") to the Lessee which loan is to be secured pursuant to a mortgage to be entered into at a future date from the Lessee to the Second Mortgagee (the "Second Mortgage"); and (iii) equity furnished by the Lessee and/or the Sublessee. To provide bridge financing for the anticipated proceeds of the ESCDC Loan, the First Mortgagee is making a loan on this date to the Lessee in the amount of \$1,945,000, which loan is to be secured by a Bridge Mortgage, Security Agreement and Assignment of Leases and Rents, dated the date hereof, from the Agency and the Lessee to the First Mortgagee (the "Bridge Loan Mortgage").

We are of the opinion that:

1. The Agency is duly created and validly existing under the Act and has good right and lawful authority to acquire and renovate the Project, to lease the Facility Realty from the Lessee in accordance with the terms of the Company Lease and to sublease the Facility Realty to the Lessee in accordance with the terms of the Lease Agreement.

2. The Agency has the right and power pursuant to the Act to enter into the Company Lease, the Lease Agreement, the Guaranty Agreement, the First Mortgage and the Bridge Loan Mortgage, and each agreement has been duly authorized, executed and delivered by the Agency, is in full force and effect, and constitutes the valid and binding agreement of the Agency enforceable against the Agency in accordance with its terms.

The foregoing opinion is qualified only to the extent that the enforceability of the Company Lease, the Lease Agreement, the Guaranty Agreement, the First Mortgage and the Bridge Loan Mortgage may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

In rendering this opinion, we have relied as to matters of title to the Facility Realty upon a leasehold title insurance policy issued on the date hereof by Lawyers Title Insurance Corporation (the "Title Company") to the Agency insuring the leasehold estate of the Agency under the Company Lease to the Facility Realty, upon a mortgagee title insurance policy issued on the date hereof by the Title Company to the First Mortgagee insuring the First Mortgage, and upon the opinion of Caruso, Caruso & Branda PC, counsel to the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors, each dated the date hereof.

In rendering this opinion, we have assumed the due recording of the Company Lease, the Lease Agreement, the Sublease Agreement, the First Mortgage and the Bridge Loan Mortgage and the due filing and sufficiency of financing statements under the New York State Uniform Commercial Code.

In rendering this opinion, with respect to (i) the due authorization, execution and delivery of the Company Lease, the Lease Agreement, the Sublease Agreement, the Guaranty Agreement, the First Mortgage and the Bridge Loan Mortgage by the Lessee, (ii) the due authorization, execution and delivery of the Sublease Agreement and the Guaranty Agreement by the Sublessee, and (iii) the due execution and delivery of the Guaranty Agreement by the Corporate Guarantor and each of the Individual Guarantors, we have relied on the opinion of Caruso, Caruso & Branda PC, counsel to the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors, dated the date hereof.

In rendering this opinion, we express no opinion as to the necessity for obtaining any licenses, permits or other approvals relating to the acquisition or renovation of the Project or the operation of the Facility, or the application or effect of any environmental laws, ordinances, rules, regulations or other requirements of any governmental authority with respect to the Facility or the Project or the transactions contemplated under the Lease Agreement.

In rendering this opinion, we have assumed the due authorization, execution and delivery of the First Mortgage and the Bridge Loan Mortgage by the First Mortgagee.

In rendering the opinions set forth above, no opinion is expressed as to whether any of the real estate tax benefits or sales tax exemptions or mortgage recording tax exemptions intended to be provided pursuant to any of the above-described documents and agreements will in fact be so provided.

The foregoing opinions are further subject, however, to the qualification that we express no opinion as to matters relating to the rights in, title to or sufficiency of the description of any property or collateral described in the Company Lease, the Lease Agreement, the Sublease Agreement, the First Mortgage or the Bridge Loan Mortgage or the creation, perfection or relative priority of any lien or security interest created with respect to such property or collateral thereunder.

This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances, or any changes in law or in interpretations thereof, that may hereafter arise or occur, or for any other reason.

Very truly yours,
Hawkins Delafield & Wood LLP

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
110 William Street, New York, New York 10038

August 29, 2007

Mr. Hammerton Jeanty
New York City Department of Finance
Payment Operations Division/PILOT Section
59 Maiden Lane, 26th Floor
New York, New York 10038

Ms. Rose Horton
New York City Department of Finance
Property Division, Exemption Unit
66 John Street, 12th Floor
New York, New York 10038

Re: 128 44th Realty Holding LLC and Barone Steel Fabricators, Inc.
128 44th Avenue
Brooklyn, New York 11232
Block 735; Lot 50

Dear Mr. Jeanty and Ms. Horton:

On the date hereof, the New York City Industrial Development Agency (the "Agency") acquired a leasehold estate in the above-described realty (which is further described in Exhibit A attached hereto) from 128 44th Realty Holding LLC, a New York liability company (the "Lessee"), pursuant to a certain Company Lease Agreement, dated as of August 1, 2007, between the Lessee, as landlord, and the Agency, as tenant, and pursuant to the provisions of 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, Chapter 1030 of the 1969 Laws of New York), as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the "Act"). On this date, the Agency and the Lessee have entered into a certain Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), pursuant to which the Agency subleased its interest in said realty to the Lessee.

Under the Act, the Agency is regarded as performing a governmental function in the exercise of the powers conferred by the Act and "shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities".

However, the Lessee is required under Section 4.3 of the Lease Agreement, attached hereto as Exhibit B, to make payments in lieu of such taxes and assessments in the manner and amounts set forth therein. Pursuant to the Lease Agreement, the Agency hereby requests that you, as tax assessor, determine before such time as said realty shall become tax exempt the taxes that would be due and owing if said realty had not been leased to the Agency, and submit statements directly to the Lessee at 128 44th Realty Holding LLC, c/o Barone Steel Fabricators, Inc., 128 44th Street, Brooklyn, New York, 11232, Attn: President, with a copy to

the Agency at the address in the letterhead, in accordance with the Lease Agreement specifying the amounts and due dates of such payments in lieu of taxes payable by the Lessee therein.

Thank you for your attention to this matter.

Very truly yours,

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Maureen P. Babis
Executive Director

EXHIBIT A

Description of the Land

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

EXHIBIT B

Section 4.3 of Lease Agreement

placed upon the Facility pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to the Company Lease, this Agreement and the Sublease Agreement, and within thirty (30) days after receipt of written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to the Company Lease, this Agreement and the Sublease Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

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

(d) Within 120 days after the close of each Fiscal Year of the Lessee during which (i) action was taken by the Lessee pursuant to Section 4.1(b) hereof or action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee, during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) no action was taken by the Lessee pursuant to Section 4.1(b) or no action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition and renovation of an industrial facility, consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area. The Facility is located at 128 44th Street, Brooklyn, New York, being Section 3, Block 735 and Lot 50.

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

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

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

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty in accordance with the provisions of Section 4.3(g) hereof, as follows: (i) in the amounts as determined in subsection (j) below during the QEZE Period, and thereafter (ii) with respect to the Land, in the amounts determined pursuant to subsection (d) below, and with respect to the Improvements, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsections (e) and (f) below.

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Department of Finance, Assessors' Office of the City, the City Surveyor, or any other relevant official of the City fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of the City or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

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

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

Subject to the provisions of subsection (j) below, for the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold interest in the Facility Realty, or (iii) the Termination Date, the Lessee shall make no payments in lieu of real estate taxes, with respect to the Land (subject to Section 4.3(i)) except as follows with respect to the below-stated Tax Fiscal Years: for July 1, 2029 to June 30, 2030, a payment equal to 20% of Full Land Taxes (as defined below) for that year; for July 1, 2030 to June 30, 2031, a payment equal to 40% of Full Land Taxes for that year; for July 1, 2031 to June 30, 2032, a payment equal to 60% of Full Land Taxes for that year; and for July 1, 2032 to June 30, 2033, a payment equal to 80% of Full Land Taxes for that year.

Certain terms used in the above formula are defined below:

"PILOT Commencement Date" shall mean July 1, 2008.

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

“**Full Land Taxes**” shall mean that amount of taxes with respect to the Land as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land and the Agency had no leasehold or other interest in the Land.

For the period commencing on the Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

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

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

Subject to the provisions of subsection (j) below, for the period commencing on the PILOT Commencement Date and ending on the earliest of the following dates to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- A. from the PILOT Commencement Date through June 30, 2029, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2029, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2029- June 30, 2030	STRET + [(CRET less STRET) x 0.2]
July 1, 2030- June 30, 2031	STRET + [(CRET less STRET) x 0.4]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.6]
July 1, 2032- June 30, 2033	STRET + [(CRET less STRET) x 0.8]

provided, however, with respect to this subsection “B,” if for any City Tax Fiscal Year CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall be an amount equal to CRET.

Certain terms used in this Section 4.3 with respect to the Improvements shall be defined as follows:

CRET or “Current Real Estate Taxes” shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements, *and*
- (II) the City’s then-current real estate tax rate;

provided, however, that as defined herein, CRET shall not take into account, or in any way be reduced by, any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

STRET or “Stabilized Real Estate Taxes” shall mean the CRET applicable on the Commencement Date.

ICIP or the “Industrial and Commercial Incentive Program” is the program, including any successor program, administered by the New York City Department of Finance (or successor agency) for the exemption from New York City real property taxes of eligible industrial or commercial improvements to real property.

ICIP Exemption shall mean the exemption, from New York City real property taxes, of assessed valuation of industrial or commercial improvements that are eligible under ICIP.

ICIP Abatement shall mean the abatement of New York City real property taxes with respect to eligible industrial or commercial improvements under ICIP.

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

(f) *Subsequent Alterations and Improvements:*

If, at any time after the Operations Commencement Date (as such term is defined in Section 8.5(ii) hereof), the Lessee shall make any alterations of or additions to the Improvements (“**Additional Improvements**”), the Lessee shall: (i) notify an Authorized Representative of the Agency of such Additional Improvements by (y) delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (z) providing requested information about such Additional Improvements on the Employment and Benefits Report (see Schedule B attached hereto); and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

- A. the increase in the assessed value of the Improvements as first assessed upon completion of the Additional Improvements and which are attributable to such Additional Improvements, *less* (except during the QEZE Period) such portion of that incremental assessed value that may be exempt by operation of an ICIP Exemption (if any), *and*
- B. the City's real property tax rate prevailing at the time of such first assessment.

The product of "A" and "B" immediately hereinabove shall be added to STRET and the resulting sum shall be deemed the new STRET for purposes of subsection (e) of this Section 4.3; *provided, however*, that if a reduction in the incremental assessed value corresponding to an ICIP Exemption is applicable, then, as the amount of that reduction diminishes over time (in accordance with the schedule of the applicable ICIP Exemption), the new STRET will correspondingly increase. In no event shall the new STRET in any way take into account or be reduced by any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

(g) *General Payment Provisions:*

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

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

If the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same to the PILOT Depository together with the lesser of (x) the maximum amount of interest thereon permitted by law and (y) the greater of (i) interest thereon at the same rate per annum from time to time and compounded at the same frequency as if such amounts were delinquent taxes and (ii) a late payment fee of 5% of the amount that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month on an amount equal to the original amount that was not paid when due that remains unpaid during such month or part thereof.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain

exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date the Agency shall no longer have a leasehold estate in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such cessation of the Agency's leasehold estate occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such cessation.

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

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

The Lessee understands and agrees that the Lessee is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, utilized or occupied by any Person (other than the Lessee or the Sublessee but including any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization and/or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessee or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

Commencing as of the date on which the Facility Realty is not used in accordance with the Act and/or this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee and the Agency had no leasehold estate in the Facility Realty.

Whenever in this Section 4.3 the Lessee is required to make additional payments in lieu of real estate taxes as if the Facility Realty were owned by the Lessee and the Agency had

no leasehold estate in the Facility Realty or specified portions thereof, the applicable tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *QEZE Tax Credits:*

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) June 30, 2012 (date is equivalent to end of QEZE tax benefits), or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty (the "QEZE Period"), the Lessee shall make payments in lieu of real estate taxes equal to, for any given City Tax Fiscal Year, "Eligible Real Property Taxes", as described under subdivision (e) of section 15 of the New York Tax Law. From July 1, 2012 until the Expiration Date, the Lessee shall make payments in lieu of real estate taxes in accordance with subsections (d), (e) and (f) of this Section 4.3. Notwithstanding clause (ii) above, in the event that the Lessee is no longer qualified or certified to be eligible for QEZE tax benefits prior to June 30, 2012, the Agency, in its sole discretion, and in furtherance of the purposes of the Act, may determine that the Lessee shall make payments in lieu of real estate taxes in accordance with subsections (d), (e) and (f) of this Section 4.3 on a date, as determined by the Agency, prior to July 1, 2012.

In the event that the State, at any time during the QEZE Period, repeals the Empire Zones Program, as established under Article 18-B of the New York General Municipal Law, or that part of it providing for the "QEZE Credit for Real Property Taxes", as defined under Section 15 of the New York Tax Law, and as a result of such repeal the Lessee is no longer eligible to claim the QEZE Credit for Real Property Taxes as it is available under current law, the Lessee shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections (d), (e) and (f); *provided, however*, that if the Lessee learns, after it has tendered a payment pursuant to this subsection (j), that as a result of such repeal it is no longer eligible to claim the QEZE Credit for Real Property Taxes with respect to such payment, the Lessee shall be entitled to a reduction in an amount equal to the excess of such payment over the amount the Lessee would otherwise have paid pursuant to subsections (d), (e), and (f) above, to be applied to its next payment to be made pursuant to this Section 4.3; *provided further, however*, that for any period during which the Lessee receives QEZE Credit for Real Property Taxes, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections (d), (e) and (f), shall apply.

(k) *Survival of Obligations:*

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

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, the Sublease Agreement, any ownership estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable under the Company Lease, hereunder

or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions**". The Agency shall forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's leasehold estate in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty and the Agency had no leasehold estate in the Facility Realty.

Section 4.5 Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, with insurance companies admitted, authorized and licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee and the Sublessee. In addition to this general requirement, such insurance shall, for purposes of subsection (b) through (g) of this Section 4.5, include, without limitation (hereinafter "**Specific Coverage**"):

(i) During any period of construction, renovation, improvement or reconstruction of any portion of the Facility Realty, to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee, the Sublessee 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 Lessee and the Sublessee as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility 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 Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or deductible amount;

**NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
110 William Street, New York, New York 10038**

August 29, 2007

Mr. Martin Gbeneky
New York City Department of Finance
Payment Operations Division/PILOT Section
59 Maiden Lane, 26th Floor
New York, New York 10038

Re: 128 44th Realty Holding LLC and Barone Steel Fabricators, Inc.
128 44th Avenue
Brooklyn, New York 11232
Block 735; Lot 50

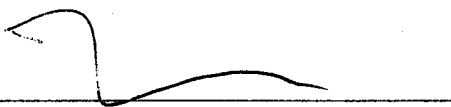
Dear Mr. Gbeneky:

On August 29, 2007, the New York City Industrial Development Agency acquired a leasehold estate in the above-referenced real property for a project for Barone Steel Fabricators, Inc. and 128 44th Realty Holding LLC (collectively, the "Company") in Kings County.

Please forward a bill for the remainder of the tax year to:

128 44th Realty Holding LLC
c/o Barone Steel Fabricators, Inc.
128 44th Avenue
Brooklyn, New York 11232
Attention: President

Very truly yours,



Maureen P. Babis
Executive Director

cc: Robert Millus
Compliance Department
New York City Industrial Development Agency
Brian Halperin
The Bank of New York



-----X
In the Matter :
of :
Taxation of the New York City :
Industrial Development Agency :
-----X

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

RICHARD E. MARSHALL, ESQ., being duly sworn, deposes and says:

1. That I am an attorney-at-law duly licensed in the State of New York and am the Vice President for Legal Affairs of the New York City Industrial Development Agency (the "Agency").

2. That the Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, was established by Chapter 1030 of the 1969 Laws of the State of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of the State of New York, as amended (collectively the "Act").

3. That on or about August 29, 2007, the Agency will enter into a "straight-lease transaction" within the meaning of the Act, in which the Agency will acquire a leasehold estate in the Facility (as defined below) from 128 44th Realty Holding LLC, a New York limited liability company (the "Lessee"), pursuant to a Company Lease Agreement, dated as of August 1, 2007, between the Lessee and the Agency (the "Company Lease"), and the Agency will sublease its leasehold interest therein to the Lessee to provide financial assistance for the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, and the renovation of the building, located at 128 44th Street, Brooklyn, New York, all for use in the business of the Sublessee (or defined below) as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area, all for sub-sublease to Barone Steel Fabricators, Inc., a corporation organized under the laws of the State of New York (the "Sublessee").

4. That simultaneously therewith, the Agency will enter into a Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), with the Lessee, pursuant to which the Agency will sublease the Facility to the Lessee.

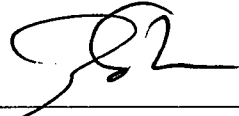
5. That simultaneously therewith, the Agency, the Lessee and SI Bank & Trust (Sovereign Bank) will enter into two certain Mortgage, Security Agreements and Assignment of Leases and Rents, each dated August 29, 2007 (collectively, the "Mortgages").

6. That pursuant to Section 874 of the Act, the Agency is regarded as performing a governmental function and is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

7. That pursuant to the provisions of Section 8017 of the Civil Practice Law and Rules of the State of New York, no clerk of any county within The City of New York shall charge or collect a fee for filing, recording or indexing any paper, documents, map or proceeding filed, recorded or indexed for the county, or an agency or officer thereof acting in an official capacity.

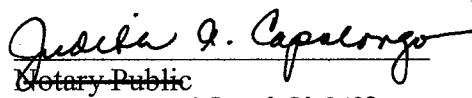
8. That pursuant to the provisions of Section 8019(d) of the Civil Practice Law and Rules of the State of New York, no clerk of any county within The City of New York shall charge or receive any fee from The City of New York or the State of New York, or from any agency or officer thereof acting in an official capacity.

9. I hereby submit that no mortgage recording tax or other tax or fee for filing, recording or indexing should be imposed in connection with the filing and recording of the Mortgages, the Company Lease and the Lease Agreement, as hereinbefore described.



Richard E. Marshall, Esq.

Sworn to before me this
28th day of August, 2007



Notary Public

JUDITH A. CAPOLONGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October ~~23~~ 1, 2007



August 29, 2007

Hawkins Delafield & Wood LLP
New York, New York

SI Bank & Trust (Sovereign Bank)
New York, New York

Barone Steel Fabricators, Inc.
Brooklyn, New York

Re: New York City Industrial Development Agency
Industrial Incentive Program
(Barone Steel Fabricators, Inc. Project)

Ladies and Gentlemen:

This opinion is being furnished to you in connection with the straight-lease transaction by the New York City Industrial Development Agency (the "Agency") for the benefit of Barone Steel Fabricators, Inc., a New York corporation (the "Sublessee"), and 128 44th Realty Holding LLC (the "Lessee"), a New York limited liability company, and pursuant to which the Agency will enter into (i) a Company Lease Agreement, dated as of August 1, 2007 (the "Company Lease"), with the Lessee, by which the Lessee will lease the Facility Realty (as defined in the Lease Agreement referred to below) to the Agency, and (ii) a Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), with the Lessee, by which the Agency will sublease the Facility Realty to the Lessee. The Lessee will sub-sublease the Facility Realty to the Sublessee pursuant to a Sublease Agreement, dated as of August 1, 2007, between the Lessee and the Sublessee (the "Sublease Agreement").

I am the Vice President for Legal Affairs to the Agency, and, in such capacity, I am familiar with the acts and proceedings heretofore had or taken by the Agency relative to the authorization of the Company Lease, the Lease Agreement, the Sublease Agreement, the Guaranty Agreement, dated as of August 1, 2007 (the "Guaranty Agreement"), from the Lessee, the Sublessee, Bar Fab Steel Corp. (the "Corporate Guarantor") and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency, two certain Mortgage, Security Agreement and Assignment of Leases and Rents both dated the date hereof (the "Mortgages"), and both from the Agency and the Lessee to SI Bank & Trust (Sovereign Bank) (the "First Mortgagee"), and a Letter of Authorization for Sales Tax Exemption, dated the date hereof, from the Agency to the Lessee. I have caused to be entrusted to Lawyers Title Insurance Corporation (the "Title Insurance Company") for due recording the

Company Lease, the Lease Agreement and the Mortgages in the Office of the Register of The City of New York in Kings County, New York. Based on the foregoing, I am of the opinion that:

(a) The Company Lease has been entrusted to the Title Insurance Company for due recording in proper form in the Office of the Register of The City of New York in Kings County, New York, which recording is the only recording necessary to give notice of the lease of the real property therein as against all creditors of the Lessee and subsequent purchasers. No rerecording is required in order to maintain notice of the Company Lease.

(b) The Lease Agreement has been entrusted to the Title Insurance Company for due recording in proper form in the office of the Register of The City of New York in Kings County, New York, which recording is the only recording necessary to give notice of the sublease of the real property therein described as against all creditors of the Agency or of the Lessee and subsequent purchasers. No rerecording is required in order to maintain notice of the Lease Agreement.

(c) There is no action, suit, proceeding or investigation at law or in equity by or before any court, public board or body, of which the Agency has notice, pending or, to the best of my knowledge, threatened against or affecting the Agency, or to the best of my knowledge is there any basis for such action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Company Lease, the Lease Agreement, the Mortgages or the Guaranty Agreement or the validity or the enforceability of the Company Lease, the Lease Agreement, the Mortgages or the Guaranty Agreement.

(d) No legislation has been enacted by the Legislature of the State of New York or the Council of The City of New York that in any way affects the creation, organization or existence of the Agency or the titles to office of any officers thereof, or the power of the Agency to lease, sublease, acquire, renovate or mortgage the Facility or improve, assign, lease or sublease the Facility referred to in the Lease Agreement.

In rendering this opinion, I have assumed (i) the due authorization, execution and delivery by and enforceability against (1) the Lessee of the Company Lease, the Lease Agreement, the Sublease Agreement, the Mortgages and the Guaranty Agreement; and (2) the Sublessee of the Sublease Agreement, and the Guaranty Agreement; and (ii) the due execution and delivery by and enforceability against the Corporate Guarantor and each of the Individual Guarantors of the Guaranty Agreement.

This opinion is delivered to the addressees solely in connection with the transaction described herein, and it may be relied upon by the parties to whom this opinion is addressed and their counsel. This opinion may not be relied upon by any other person, firm or entity without the Agency's prior written consent.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. Marshall', written in a cursive style.

Richard E. Marshall, Esq.,
Vice President for Legal Affairs



LETTER OF REPRESENTATION

August 29, 2007

New York City Industrial
Development Agency
New York, New York

SI Bank & Trust (Sovereign Bank)
New York, New York

Dear Sir/Madam:

In order to induce New York City Industrial Development Agency (the "Agency") to enter into a straight-lease transaction for the benefit of Barone Steel Fabricators, Inc., a New York corporation (the "Sublessee"), and 128 44th Realty Holding LLC, a New York limited liability company (the "Lessee"), and in consideration of the foregoing, Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), Bar Fab Steel Corp., a New York corporation as corporate guarantor (the "Corporate Guarantor") the Lessee and the Sublessee hereby certify, represent, warrant, and covenant to and with the Agency and SI Bank & Trust (Sovereign Bank) (the "First Mortgagee") as follows (capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease Agreement referred to herein):

1. There is no pending or threatened action, suit, proceeding, inquiry or investigation, at law or in equity, by or before any court, public board or body, known by the Lessee, the Sublessee, the Corporate Guarantor or any of the Individual Guarantors, nor to the best of the knowledge of the Lessee, the Sublessee, the Corporate Guarantor or any of the Individual Guarantors is there any basis therefor, looking toward the dissolution or liquidation of the Lessee or the Sublessee or wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Company Lease Agreement, dated as of August 1, 2007, between the Lessee and the Agency, (the "Company Lease"); the Lease Agreement, dated as of August 1, 2007, between the Agency and the Lessee (the "Lease Agreement"); the Sublease Agreement, dated as of August 1, 2007, between the Lessee and the Sublessee; the Guaranty Agreement, dated as of August 1, 2007, from the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors to the Agency; the Letter of Authorization for Sales Tax Exemption, dated the date hereof, from the Agency to the Lessee; two certain Mortgage, Security Agreements and Assignment of Leases and Rents , each dated the date hereof, and each from the Agency and the Lessee to the First Mortgagee; or this Letter of Representation (the documents referenced in this paragraph above being referred to collectively as the "Transaction Documents", and those Transaction Documents to which the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors shall be a party, shall be referred to as the "Lessee Documents", the "Sublessee Documents", the "Corporate Guarantor Documents" and the "Individual Guarantors Documents", respectively); or might result in any materially adverse condition (financial or otherwise), in the business or the property or assets of the Lessee, the Sublessee, the Corporate Guarantor or any of the Individual Guarantors.

2. The Lessee is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and the other Lessee Documents.

3. The Sublessee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and the other Sublessee Documents.

4. The Corporate Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Letter of Representation and the other Sublessee Documents.

5. The execution, delivery and performance of the Lessee Documents have been duly authorized by all requisite action on the part of the Lessee, and the execution and delivery thereof and compliance with the provisions thereof have not and will not violate any provision of law, the articles of organization or the operating agreement of the Lessee, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

6. The execution, delivery and performance of the Sublessee Documents have been duly authorized by all requisite corporate action on the part of the Sublessee, and the execution and delivery thereof and compliance with the provisions thereof have not and will not violate any provision of law, the certificate of incorporation or bylaws of the Sublessee, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which the Sublessee is a party or by which it or any of its property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

7. The execution, delivery and performance of the Corporate Guarantor Documents have been duly authorized by all requisite corporate action on the part of the Corporate Guarantor, and the execution and delivery thereof and compliance with the provisions thereof have not and will not violate any provision of law, the certificate of incorporation or bylaws of the Corporate Guarantor, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which the Corporate Guarantor is a party or by which it or any of its property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

8. The execution, delivery and performance by the Individual Guarantors of the Individual Guarantors Documents and compliance with the provisions thereof have not and will not violate any provision of law, any order, judgment or decree of any court or agency of government, or any indenture, agreement or other instrument to which any Individual Guarantor

is a party or by which any Individual Guarantor or any of their respective property is subject to or bound, or be in conflict with, or constitute (with due notice and/or lapse of time) a breach of or default under any such indenture, agreement or other such instrument.

9. The Lessee Documents, and any and all other agreements and documents required to be executed and delivered by the Lessee in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly authorized, executed and delivered by the Lessee and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their terms.

10. The Sublessee Documents, and any and all other agreements and documents required to be executed and delivered by the Sublessee in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly authorized, executed and delivered by the Sublessee and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Sublessee, enforceable against the Sublessee in accordance with their terms.

11. The Corporate Guarantor Documents, and any and all other agreements and documents required to be executed and delivered by the Corporate Guarantor in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly authorized, executed and delivered by the Corporate Guarantor and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Corporate Guarantor, enforceable against the Corporate Guarantor in accordance with their terms.

12. The Individual Guarantors Documents, and any and all other agreements and documents required to be executed and delivered by the Individual Guarantors in order to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement, have been duly executed and delivered by the Individual Guarantors and have not been amended, modified or rescinded, remain in full force and effect and are the legal, valid and binding obligations of the Individual Guarantors enforceable against the Individual Guarantors in accordance with their terms.

13. The representations and warranties of the Lessee contained in the Lessee Documents are true, complete and correct and in full force and effect as of the date hereof, with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to any of the Lessee Documents.

14. The representations and warranties of the Sublessee contained in the Sublessee Documents are true, complete and correct and in full force and effect as of the date hereof with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to any of the Sublessee Documents.

15. The representations and warranties of the Corporate Guarantor contained in the Corporate Guarantor Documents are true, complete and correct and in full force and effect as of the date hereof with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to any of the Corporate Guarantor Documents.

16. The representations and warranties of the Individual Guarantors contained in the Individual Guarantors Documents are true, complete and correct and in full force and effect as of the date hereof with the same effect as if those representations and warranties were made on and as of the date hereof. As of the date hereof, no Event of Default or default has occurred and is continuing with respect to the Individual Guarantors Documents.

17. All out-of-pocket costs, expenses and fees of the Agency incident to the preparation, execution and delivery of the Transaction Documents, and all other agreements and documents contemplated hereby and thereby, and the fees and disbursements of Hawkins Delafield & Wood LLP and the Agency shall be paid by the Lessee and the Sublessee.

18. The Lessee is not a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Lessee's opinion, materially adversely affects, or in the future may, so far as the Lessee can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of the Lessee.

19. The Sublessee is not a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Sublessee's opinion, materially adversely affects, or in the future may, so far as the Sublessee can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of the Sublessee.

20. The Corporate Guarantor is not a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the Corporate Guarantor's opinion, materially adversely affects, or in the future may, so far as the Corporate Guarantor can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of the Corporate Guarantor.

21. None of the Individual Guarantors is a party to or bound by any contract, agreement or other instrument, or subject to any judgment, order, writ, injunction, decree, rule or regulation which, in the opinion of each Individual Guarantor, materially adversely affects, or in the future may, so far as each Individual Guarantor can now foresee, materially adversely affect, the business, operations, affairs, properties, assets or condition, financial or otherwise, of each Individual Guarantor.

22. Neither this Letter of Representation nor any other document, certificate or statement furnished to you by or on behalf of the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors contains any untrue statement of a material fact or omits to state a material fact necessary in order to make such statements contained herein and

therein not misleading. There is no fact known to the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors which materially adversely affects or in the future may (so far as the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors can now foresee) materially adversely affect the business, operations, affairs, conditions, properties or assets of the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors, which has not been set forth in this Letter of Representation or in a document, certificate or statement furnished to you by or on behalf of the Lessee, the Sublessee, the Corporate Guarantor or either of the Individual Guarantors prior to or on the date hereof as provided therein.

23. The Lessee and the Sublessee have been induced to proceed with the Project by, among other things, the ability of the Agency to provide financial assistance for the Project.

24. The operation of the Facility in the manner presently contemplated and as described in the Lease Agreement will not conflict with any zoning, environmental, water or air pollution law, ordinance or regulation or any similar law, ordinance or regulation applicable thereto as they exist as of the date hereof.

25. The Project is not within the type of actions or classes of actions identified by the New York State Department of Environmental Conservation under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law, which will in almost every instance have a significant effect on the environment and are therefore likely to require the preparation of environmental impact statements.

26. All provisions contained herein shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Agency, and shall survive the delivery of the Transaction Documents.


27. The validity, interpretation and performance of this Letter of Representation shall be governed by the laws of the State of New York.

[Intentionally Left Blank]

28. This letter 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.


Very truly yours,

BARONE STEEL FABRICATORS, INC.

By: 

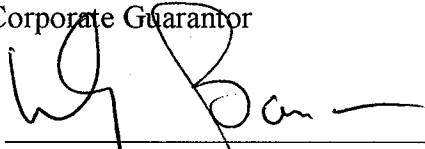
Nicky Barone
President

128 44TH REALTY HOLDING LLC

By: 

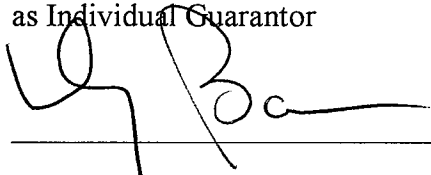
Nicky Barone
Member

BAR FAB STEEL CORP.,
as Corporate Guarantor

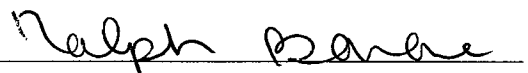
By: 

Nicky Barone
President

NICKY BARONE,
as Individual Guarantor



RALPH BARONE,
as Individual Guarantor



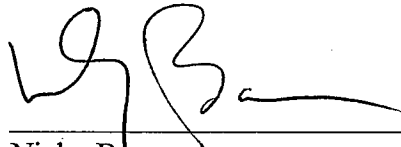


**CERTIFICATE OF THE LESSEE AS TO COMPLIANCE
WITH SECTIONS 4.5 AND 6.2 OF THE LEASE AGREEMENT**

The undersigned HEREBY CERTIFIES ON BEHALF OF THE LESSEE (as defined below) that he is an Authorized Representative (as defined in the Lease Agreement referred to below) of 128 44th Realty Holding LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), and HEREBY FURTHER CERTIFIES on behalf of the Lessee that the Lessee is in full compliance as of the date hereof with those requirements imposed on the Lessee under Sections 4.5 and 6.2 of the Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the New York City Industrial Development Agency and the Lessee, and that attached hereto is a true and correct copy of that certificate of insurance evidencing the compliance by the Lessee with the insurance requirements set forth in Sections 4.5 and 6.2 of the Lease Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this August 29, 2007.

128 44TH REALTY HOLDING LLC

By: 

Nicky Barone
Member

ACORD INSURANCE BINDER

DATE
08/08/2007

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER Admiral Insurance Brokerage Corp 5507 Avenue N Brooklyn, NY 11234	PHONE (A/C. No. Ext): (718) 241-8500 FAX (718) 241-8520	COMPANY Seneca	BINDER # B07080808497
CODE: 01-10831 SUB CODE:		THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:	
AGENCY CUSTOMER ID: 00005672 INSURED 128 44th Realty Holding LLC 128 44th Street Brooklyn, NY 11232		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location) Property Located at: 128 44th Street Brooklyn, NY 11232	

COVERAGES

TYPE OF INSURANCE	COVERAGE/FORMS	LIMITS		
PROPERTY CAUSES OF LOSS		DEDUCTIBLE	COINS %	AMOUNT
<input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPEC	Building	5,000	100	4,800,000
<input checked="" type="checkbox"/> GENERAL LIABILITY		EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000		
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	RETRO DATE FOR CLAIMS MADE:	COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$		
<input type="checkbox"/> AUTOMOBILE LIABILITY		ACTUAL CASH VALUE STATED AMOUNT \$ OTHER		
<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$		
<input type="checkbox"/> AUTO PHYSICAL DAMAGE DEDUCTIBLE <input type="checkbox"/> COLLISION: <input type="checkbox"/> OTHER THAN COL:	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ WC STATUTORY LIMITS		
<input type="checkbox"/> GARAGE LIABILITY		E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$		
<input type="checkbox"/> ANY AUTO	RETRO DATE FOR CLAIMS MADE:	FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$		
<input type="checkbox"/> EXCESS LIABILITY				
<input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				
SPECIAL CONDITIONS/ OTHER COVERAGES				

NAME & ADDRESS

New York City Industrial Development Agency 110 William Street New York, NY 10038 Attn: Deputy Executive Director	<input checked="" type="checkbox"/> MORTGAGEE	<input checked="" type="checkbox"/> ADDITIONAL INSURED
	<input checked="" type="checkbox"/> LOSS PAYEE	
	LOAN #	
AUTHORIZED REPRESENTATIVE <i>Ciro Esposito</i> Ciro Esposito/CIROE		

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/23/2007

PRODUCER (718)241-8500 FAX (718)241-8520
Admiral Insurance Brokerage Corp
5507 Avenue N
Brooklyn, NY 11234

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Barone Steel Fabricators Inc
271 40th Street
Brooklyn, NY 11232 AND
128 44TH REALTY HOLDING LLC

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Westchester Fire Insurance Co.	21121
INSURER B: Massachusetts Bay Insurance Co	
INSURER C: Everest National Insurance Co	
INSURER D: AIG	
INSURER E: Zurich	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab.	G22006836002	12/01/2006	12/01/2007	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 1,000,000				
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AHY7761315-02	12/01/2006	12/01/2007	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
	BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$				
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	71G4000007061	12/01/2006	12/01/2007	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
D	EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC5311103	12/01/2006	12/01/2007	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
					E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	OTHER Disability	1633604-001	03/31/2003	Continuous	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED WITH RESPECTS TO THE POLICY.

THE LOCATION AT 128 44TH STREET BROOKLYN, NY 11232
INCLUDES CONTRACTUAL LIABILITY COVERAGE INCLUDED IN SECTION 4.5 & 6.2 OF THE LEASE AGREEMENT DATED AS OF 08/29/2007 BETWEEN THE CERTIFICATE HOLDER & 128 44th REALTY HOLDING LLC. THE INSURERS ARE AUTHORIZED AND ADMITTED IN NEW YORK STATE.

CERTIFICATE HOLDER

New York City Industrial
Development Agency
110 William Street
Attn: Deputy Executive Director
New York, NY 10038

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~SEND BY MAIL~~

30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE
Ciro Esposito/CIROE



MEMBER'S CERTIFICATE OF THE LESSEE

The undersigned member of 128 44th Realty Holding LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), the Lessee and Barone Steel Fabricators, Inc. (the "Sublessee") in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, and renovation of such building located at 128 44th Street, Brooklyn, New York, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

2. Attached hereto as Exhibit A is a true, correct and complete copy of the articles of organization of the Lessee, together with all amendments thereto, certified by the Secretary of State of the State of New York as in effect on the date hereof.

3. Attached hereto as Exhibit B is a true, correct and complete copy of the operating agreement of the Lessee, together with all amendments thereto as in effect on the date hereof.

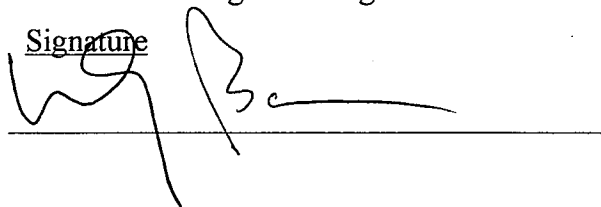
4. Attached hereto as Exhibit C is a true, correct and complete copy of the consents duly adopted by the members of the Lessee, which consents have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of the Lessee with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the undersigned.

5. Each document relating to the Project required to be executed by the Lessee has been executed on behalf of the Lessee by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is a member of the Lessee, and the signature below set forth opposite his name is his genuine signature:

Name

Nicky Barone

Signature

A handwritten signature in black ink, appearing to read 'Nicky Barone', is written over a horizontal line. The signature is stylized and cursive.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this August

29 2007.

128 44TH REALTY HOLDING LLC

By: Ralph Barone
Ralph Barone
Member

Faint, illegible text running vertically along the right edge of the page.



STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
August 21, 2007.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

070517000602

ARTICLES OF ORGANIZATION

OF

128 44TH REALTY HOLDING LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

THE UNDERSIGNED, being a natural person of at least eighteen (18) years of age and acting as the organizer of the limited liability company (the "Company") hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), certifies that:

FIRST: The name of the Company is:

128 44TH REALTY HOLDING LLC

SECOND: The county within the State of New York in which the principal office of the Company is to be located is **KINGS**.

THIRD: The Secretary of State is designated as the agent of the Company upon whom process against the Company may be served. The post office address within or without the State of New York to which the Secretary of State shall mail a copy of any process against the Company served upon such Secretary of State is **THE LLC, 271 40TH STREET, BROOKLYN, NY 11230**.

FOURTH: The Company shall be managed by one or more **MEMBERS**.

IN WITNESS WHEREOF, I have subscribed these Articles of Organization and do hereby affirm the foregoing as true under penalties of perjury, this 05/17/07



Sharon Babala
Sole Organizer
c/o Blumberg *Excelsior* Corporate Services
52 South Pearl Street, 2nd Floor
Albany, NY 12207

070517000602

070517 000 602

ARTICLES OF ORGANIZATION

OF

128 44TH REALTY HOLDING LLC

Under Section 203 of the Limited Liability Company Law of the State of New York

BLU-39
DRAWDOWN

FILED BY:

BLUMBERGEXCELSIOR CORPORATE SERVICES INC.
52 SOUTH PEARL STREET, 2ND FLR
ALBANY, NY 12207

2007 MAY 17 PM 2:12

2007 MAY 17 AM 11:06

RECEIVED

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 17 2007
TAXS
BY:

666

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
128 44TH REALTY HOLDING LLC**

This Limited Liability Company Operating Agreement of 128 44th Realty Holding LLC, a New York limited liability company organized pursuant to the New York Limited Liability Company Law, is entered into and shall be effective as of the Effective Date, by and among the Company and the persons executing this Company Agreement as Members.

**ARTICLE I
DEFINITIONS**

For purposes of this Company Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1.1 **[Acquisition Agreement.** The Agreement of Purchase and Sale dated as of 4/18/07 between Vouyiouklis and Barone, regarding the sale of the Asset to the Company.]

1.2 **[Acquisition Loan.** A loan ~~not in excess of \$XXXXXXXXXXXXXXXXXXXXXXX~~ XXXXXXXXXXXXXXXXXXXXXXXXXXXX to the Company to finance the acquisition of the Asset, which loan will be secured by a mortgage or other lien on the Asset.]

1.3 **Additional Capital Contribution.** An additional Capital Contribution payable by the Members to the Company pursuant to Article VIII.

1.4 **Affiliate.** With respect to any Person, any entity controlling, controlled by or under common control with such Person. "Control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of over 50% of the voting securities of such Person, by contract or otherwise.

1.5 **Article.** An Article of this Company Agreement.

1.6 **Articles of Organization.** The Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.

1.7 **[Asset.** The real property located at 128 44th Street, Brooklyn, NY and all improvements thereon.]

1.8 **Assignee or "transferee."** A transferee of an Economic Interest who has not been admitted as a Substitute Member. Unless otherwise clear from the context of its use, the term "transferee" is synonymous with the term "Assignee."

1.9 **Bankrupt Person.** A Person who: (a) has become the subject of an Order for Relief under the United States Bankruptcy Code by voluntary or involuntary petition, or (b) has initiated, either in an original Proceeding or by way of answer in any state insolvency or

receivership Proceeding, an action for liquidation arrangement, composition, readjustment, dissolution or similar relief.

1.10 **Business Day.** Any day other than Saturday, Sunday or any legal holiday observed in the State of New York.

1.11 **Capital Account.** The account maintained for a Member or an Assignee determined in accordance with Article VIII.

1.12 **Capital Contribution.** A Member's Initial Capital Contribution plus any Additional Capital Contribution made by the Member in accordance with this Company Agreement. A Capital Contribution includes (a) the amount of any money contributed by the Member to the Company (including liabilities of the Company assumed by the Member as provided in section 1.704-1(b)(2)(iv)(c) of the Regulations), and (b) the Gross Asset Value of any Property contributed to the Company by such Member (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under section 752 of the Code).

1.13 **Commitment.** The Initial Capital Contribution and Additional Capital Contributions that a Member is obligated to make.

1.14 **Company.** 128 44th Realty Holding LLC, a limited liability company formed under the laws of New York, and any successor limited liability company.

1.15 **Company Agreement.** This Limited Liability Company Operating Agreement including all amendments adopted in accordance with the Company Agreement and the NY LLC Law.

1.16 **Default Interest Rate.** The prime rate published by the Wall Street Journal for the last Business Day on which a Commitment is payable.

1.17 **Delinquent Member.** Delinquent Member shall have the meaning set forth in Section 8.3.

1.18 **Disposition (Dispose).** Any sale, assignment, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

1.19 **Dissociation.** Any action which causes a Person to cease to be a Member as described in Article XII hereof.

1.20 **Dissolution Event.** An event, the occurrence of which will result in the dissolution of the Company under Article XIII unless the Members unanimously agree to the contrary.

1.21 **Distribution.** A transfer of Property to a Member on account of a Membership Interest.

1.22 **Economic Interest.** The right to receive allocations of Profits and Losses, Distributions, returns of capital and distribution of assets upon a dissolution of the Company.

1.23 **Effective Date.** May 17, 2007

1.24 **Exhibit A.** Exhibit A to this Company Agreement setting forth the name, address, Initial Capital Contribution, Initial Membership Interest and Initial Sharing Ratio of each Member.

1.25 **Fair Market Value.** As of any date, the fair market value of an asset on such date as determined in good faith by the Managing Member. For this purpose, the Managing Member may in its reasonable and prudent discretion value assets that are restricted by law, contract, market conditions (including trading volume relative to the Company's holding) or otherwise as to salability or transferability at an appropriate discount, based on the nature and term of such restrictions.

1.26 **Fiscal Year.** The twelve month period ending on December 31 of each year.

1.27 **Gross Asset Value.** Gross Asset Value, with respect to any Company asset means the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any Company asset contributed by a Member to the Company shall be the Fair Market Value of such Company asset as of the date of such contribution;

(b) The Gross Asset Value of each Company asset shall be adjusted to equal its Fair Market Value, as of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution unless the Managing Member determines that such adjustment is not necessary to reflect the relative Economic Interests of the Members of the Company; (ii) the Distribution by the Company to a Member of more than a de minimis amount of Company assets (other than cash) as consideration for all or part of its Membership Interest unless the Managing Member determines that such adjustment is not necessary to reflect the relative Economic Interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of section 1.704-1(b)(2)(ii)(g) of the Regulations;

(c) The Gross Asset Value of a Company asset distributed to any Member shall be the Fair Market Value of such Company asset as of the date of Distribution thereof;

(d) The Gross Asset Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted basis of such Company asset pursuant to section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to section 1.704-1(b)(2)(iv)(m) of the Regulations; provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (d) to the extent that the Managing Member determines that an adjustment pursuant to paragraph (b) above is

necessary or appropriate in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph; and

(e) If the Gross Asset Value of a Company asset has been determined or adjusted pursuant to paragraph (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted to reflect the depreciation or amortization taken into account with respect to such Company asset for purposes of computing Profits and Losses.

1.28 **Initial Capital Contribution.** The Initial Capital Contribution set forth in Exhibit A.

1.29 **Initial Membership Interest.** The Initial Membership Interest set forth in Exhibit A.

1.30 **Initial Sharing Ratio.** The Initial Sharing Ratio set forth in Exhibit A.

1.31 **Management Right.** The right of a Member to participate in the management of the Company, to vote on any matter and to grant or withhold consent or approval of actions of the Company.

1.32 **Managing Member.** Nick Barone.

1.33 **Member.** A party executing the Company Agreement and a Substitute Member.

1.34 **Membership Interest.** A Member's Economic Interest and Management Right.

1.35 **Net Cash Flow.** Net Cash Flow shall mean with any respect to any fiscal period of the Company, all cash revenues of the Company during that period, decreased by, without duplication, (a) cash expenditures for operating expenses, (b) capital expenditures to the extent not made from reserves, (c) repayment of principal on any financing and (d) taxes.

1.36 **NY LLC Law.** The New York Limited Liability Company Law and all amendments thereto.

1.37 **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

1.38 **Permitted Transferee.** Permitted Transferee shall have the meaning set forth in Section 11.5.

1.39 **Person.** An individual, trust, estate or any Organization permitted to be a member of a limited liability company under the laws of the State of New York.

1.40 **Principal Office.** The Principal Office of the Company set forth in Section 2.6.

1.41 Proceeding. Any administrative, judicial or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication, mediation and appeal or review of any of the foregoing.

1.42 Profits and Losses. For each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in section 705(a)(2)(B) of the Code or treated as section 705(a)(2)(B) of the Code expenditures pursuant to section 1.704-1(b)(2)(iv)(i) of the Regulations (other than expenses in respect of which an election is properly made under section 709 of the Code), and not otherwise taken into account in computing Profits or Losses pursuant to this Section, shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Company asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Company asset disposed of, notwithstanding that the adjusted tax basis of such Company asset may differ from its Gross Asset Value;

(e) In accordance with section 1.704-1(b)(2)(iv)(g)(3) of the Regulations, depreciation with respect to any Company asset shall be computed by reference to the adjusted Gross Asset Value of such asset, notwithstanding that the adjusted tax basis of such Company asset differs from its Gross Asset Value; and

(f) Notwithstanding any other provisions of this definition, any item which is specially allocated pursuant to Section 9.4 or 9.5 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 9.4 or 9.5 shall be determined by applying rules analogous to those set forth in paragraphs (a) through (e) above.

1.43 Property. Any property, real or personal, tangible or intangible, including money, and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

1.44 **Regulatory Allocations.** Regulatory Allocations shall have the meaning set forth in Section 9.5.

1.45 **Section.** A section of this Company Agreement.

1.46 **Securities Act.** The Securities Act of 1933, as amended.

1.47 **Sharing Ratio.** With respect to any Member, as of any date, the ratio (expressed as a percentage) of (a) such Member's Capital Contribution to (b) the aggregate Capital Contributions of all Members, or such other ratio as shall be agreed by all Members from time to time. The Initial Membership Interest and Initial Sharing Ratio of each Member is set forth in Exhibit A hereof, and Exhibit A shall be amended as necessary to conform to any changes thereof agreed to by the Members. In the event all or any portion of a Membership Interest is transferred in accordance with the terms of this Company Agreement, the transferee shall succeed to the Membership Interest and Sharing Ratio of the transferor to the extent it relates to the transferred Membership Interest.

1.48 **Substitute Member.** An Assignee who has been admitted to all of the rights of membership pursuant to Section 11.4.

1.49 **Tax Characterization and Additional Tax Terms.** It is intended that the Company be characterized and treated as a partnership for, and solely for, federal, state and local income tax purposes. For such purpose, the Company shall be subject to all of the provisions of subchapter K of chapter 1 of subtitle A of the Code, all references to a "Partner," to "Partners" and to the "Partnership" in this Company Agreement (including the provisions of Articles VIII and IX) and in the provisions of the Code and Regulations cited in this Company Agreement shall be deemed to refer to a Member, the Members and the Company, respectively. In addition, the following terms shall have the following meanings:

(a) **Adjusted Capital Account Deficit** shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account the minimum gain chargeback that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations and the amount of such Member's share of Partner Nonrecourse Debt Minimum Gain; and

(ii) Debit to such Capital Account the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(b) Code shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.

(c) Nonrecourse Deductions has the meaning set forth in section 1.704-2(b)(1) of the Regulations.

(d) Nonrecourse Liability has the meaning set forth in section 1.704-2(b)(3) of the Regulations.

(e) Partner Nonrecourse Debt has the meaning set forth in section 1.704-2(b)(4) of the Regulations.

(f) Partner Nonrecourse Debt Minimum Gain means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with section 1.704-2(i)(3) of the Regulations.

(g) Partner Nonrecourse Deductions has the meaning set forth in sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(h) Partnership Minimum Gain has the meaning set forth in sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

(i) Regulations shall mean the final and temporary federal income tax regulations promulgated by the United States Treasury Department under the Code as such Regulations may be amended from time to time, or if no final or temporary regulations with respect to a tax issue are then in effect, proposed regulations then in effect if approved by the Managing Member. All references herein to a specific section of the Regulations shall be deemed also to refer to any corresponding provision of succeeding Regulations.

1.50 **Winding Up Sale.** Winding Up Sale shall have the meaning set forth in Section 9.9(a).

ARTICLE II FORMATION

2.1 **Organization.** The Members hereby organize the Company as a New York limited liability company pursuant to the provisions of the NY LLC Law.

2.2 **Company Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members executing the Company Agreement hereby agree to the terms and conditions of the Company Agreement, as it may from time to time be amended. It is the express intention of the Members that the Company Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Company Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the NY LLC Law, the Company

Agreement shall govern, even when inconsistent with, or different than, the provisions of the NY LLC Law or any other law or rule. To the extent any provision of the Company Agreement is prohibited or ineffective under the NY LLC Law, the Company Agreement shall be considered amended to the smallest degree possible in order to make the Company Agreement effective under the NY LLC Law. In the event the NY LLC Law is subsequently amended or interpreted in such a way to make any provision of the Company Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

2.3 **Name.** The name of the Company is:

128 44th Realty Holding LLC

and all business of the Company shall be conducted under that name or under any other name but, in any case, only to the extent permitted by applicable law.

2.4 **Term.** The term of the Company shall be perpetual unless the Company shall be sooner dissolved and its affairs wound up in accordance with the NY LLC Law or the Company Agreement.

2.5 **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization as filed in the office of the Department of State of New York. The Managing Member, may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Managing Member shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

2.6 **Principal Office.** The Principal Office of the Company shall be located at 271 40th Street, Brooklyn, NY

2.7 **Publication.** Within 120 days after the effectiveness of the initial Articles of Organization, the Managing Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

ARTICLE III PURPOSE; NATURE OF BUSINESS

The purpose of the Company is [to acquire, improve, own, develop, manage, finance, lease and otherwise operate the Asset and to otherwise deal with any Property that the Company may acquire or have a right to acquire, and, in that connection, to finance and refinance the Asset and any Property, and ultimately to dispose of the Asset, and to do the same with respect to any Property that the Company may acquire, have a right to acquire

as a result of its ownership of the Asset and to engage in any and all business in connection therewith.] The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Article III. The Company exists only for the purpose specified in this Article III and may not conduct any other business without the unanimous consent of the Members. The authority granted to the Managing Member hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

ARTICLE IV ACCOUNTING AND RECORDS

4.1 **Records to be Maintained.** The Company shall maintain the following records at the Principal Office:

- (a) A current list of the full name and last known business address of each Member;
- (b) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles of Organization or any such amendment has been executed;
- (c) A copy of the Company's federal, state and local income tax returns and reports;
- (d) A copy of the Company Agreement including all amendments thereto; and
- (e) The Company's books and records, including financial statements of the Company, which shall be open to inspections by the Members or their agents at reasonable times.

4.2 **Reports to Members.** The Managing Member shall provide reports, including a balance sheet, statement of profit and loss and changes in Members' accounts and a statement of cash flows, at least annually to the Members at such time and in such manner as the Managing Member may determine reasonable.

4.3 **Tax Returns and Reports.** The Managing Member, at Company expense, shall prepare and timely file income tax returns of the Company in all jurisdictions where such filings are required, and shall prepare and deliver to each Member, within the time prescribed by the Code, and any extensions applicable thereto, as provided by the Code or applicable regulations, and at Company expense, all information returns required by the Code and Company information necessary for the preparation of the Members' federal income tax returns.

ARTICLE V NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are as stated on Exhibit A.

**ARTICLE VI
RIGHTS AND DUTIES OF MEMBERS**

6.1 **No Management Rights as Members.** No Member other than the Managing Member shall have authority as a Member to bind the Company or any Management Right, except that the transfer of Management Rights and the admission of a Substitute Member shall require the approvals set forth in Section 11.4, and the following actions shall require the consent of the Members holding a majority of the Membership Interests:

- (a) Any amendment to the Company Agreement;
- (b) The merger or consolidation of the Company with any other Person;
- (c) The continuation of the Company after a Dissolution Event;
- (d) The borrowing of funds or the pledging, mortgaging or otherwise encumbering any Company Property, except for (i) any loan to meet operating expenses if operating income and reserves are insufficient or for emergency or other extraordinary circumstances [and (ii) any loan for the purpose of refinancing the Asset];
- (e) The payment of compensation to the Managing Member;
- (f) The imposition of any Additional Contribution, except as provided in Section 8.2;
- (g) The admission of a Person as an additional Member; and
- (h) Any act that would make it impossible to carry on the ordinary business of the Company.

All Company cash shall be deposited in a bank account selected by the Managing Member and all disbursements of Company cash shall be approved in advance by those Persons designated by the [board of directors of the] Managing Member.

[The Members hereby approve and consent to the Company's borrowing pursuant to the Acquisition Loan and to the Company's acquisition of the Asset pursuant to the Acquisition Agreement.]

6.2 **Liability of Members.** No Member shall be liable as such for the liabilities of the Company.

6.3 **Indemnification.** A Member shall indemnify the Company for any costs or damages incurred by the Company as a result of any unauthorized action by such Member.

6.4 **Representations, Warranties and Covenants.** Each Member, and in the case of a trust or other Organization, the person(s) executing the Company Agreement on behalf of the entity, hereby represents and warrants to the Company and each other Member that: (a) if that Member is a trust or other Organization, it has power to enter into the Company Agreement and

to perform its obligations hereunder and that the person(s) executing the Company Agreement on behalf of the entity has the power to do so; and (b) the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest. The Members acknowledge that their interests in the Company have not been registered under the Securities Act or any state securities laws and may not be resold or transferred without appropriate registration or the availability of an exemption from such requirements.

6.5 Conflicts of Interest.

(a) A Member, including the Managing Member, shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company or its Affiliates, it being expressly understood that Members may enter into transactions that are similar to the transactions into which the Company or its Affiliates may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any Property, Profit or benefit derived by the Member, without the consent of all of the other Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company Property including information developed exclusively for the Company and opportunities expressly offered to the Company.

(b) A Member, including the Managing Member, does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a Person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is fair to the Company.

ARTICLE VII MANAGING MEMBER

7.1 Managing Member. Except as otherwise provided in the Company Agreement, the management of the Company and all decisions concerning the business affairs of the Company shall be made by the Managing Member. The Managing Member shall be Nick Barone.

7.2 Term of Office as Managing Member. The Managing Member shall serve until the Dissociation of such Managing Member or any removal of such Managing Member pursuant to Section 7.7.

7.3 Authority of Managing Member to Bind the Company. Only the Managing Member and authorized agents of the Company shall have the authority to bind the Company. Subject to Section 6.1, the Managing Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company (as described in Article III), including, without limitation:

(a) To acquire, hold, sell, transfer, assign, lease or otherwise deal with **[the Asset or other]** Property that may be acquired by the Company, and to transfer **[the Asset or other]** Property to any other Organization that is (i) wholly-owned by the Company or is owned by the Members in the same proportions as their Sharing Ratios, (ii) a subsidiary limited liability company (or partnership) in which the Company is the sole non-managing member (or sole limited partner) and the Managing Member is the sole managing member (or sole general partner) or (iii) a nominee or agent of the Company, in such manner as the Managing Member may deem appropriate to protect the Company and the Members from liability (including environmental liability) and to minimize the tax burden of the Members;

(b) To institute, prosecute and defend any Proceeding in the Company's name;

(c) To conduct the Company's business, establish Company offices and exercise the powers of the Company;

(d) Subject to Section 7.11, to employ, contract and deal with, from time to time, Persons, including any Member or Affiliate of any Member, in connection with the management and operation of the Company's business, including without limitation, suppliers, customers, tradespeople, brokers, accountants and attorneys, on such terms as the Managing Member shall determine;

(e) To purchase liability and other insurance to protect the Company's business and Property;

(f) To establish reserve funds of the Company to provide for future requirements for operations, contingencies or any other purpose that the Managing Member deems necessary or appropriate;

(g) To make such elections under the Code and other relevant tax laws as to the treatment of items of Company income, gain, loss, deduction and credit, and as to all other relevant matters as the Managing Member deems necessary or appropriate, including without limitation, elections referred to in section 754 of the Code (subject to Section 9.6), the determination of which items of cash outlay shall be capitalized or treated as current expenses, and the selection of the method of accounting and bookkeeping procedures to be used by the Company;

(h) To pay as a Company expense any and all costs or expenses associated with the formation, development, organization and operation of the Company;

(i) To deposit, withdraw, invest, pay, retain and distribute the Company's funds in a manner consistent with the provisions of this Company Agreement; and

(j) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

7.4 Actions of the Managing Member. The Managing Member has the power to bind the Company as provided in this Article VII. No Person dealing with the Company shall have any obligation to inquire into the power or authority of the Managing Member acting on behalf of the Company.

7.5 Indemnification. The Company shall indemnify the Managing Member and its agents for all costs, losses, liabilities and damages paid or incurred in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New York.

7.6 Managing Member's Standard of Care. The Managing Member's standard of care in the discharge of the Managing Member's duties to the Company and the other Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, fraud or a knowing violation of law. In discharging its duties, the Managing Member shall be fully protected in relying in good faith upon the records required to be maintained under Article IV and upon such information, opinions, reports or statements by any Person as to matters the Managing Member reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid. The Company shall indemnify and save harmless the Managing Member against any loss, damage or expense (including attorneys' fees) incurred by the Managing Member as a result of any act performed or omitted on behalf of the Company or in furtherance of the Company's interests without, however, relieving the Managing Member of liability for gross negligence, reckless conduct, intentional misconduct, fraud or a knowing violation of law. The satisfaction of any indemnification and any saving harmless shall be from and limited to Company Property and the other Members shall not have any personal liability on account thereof.

7.7 Resignation; Removal of Managing Member. The Managing Member shall not have a right to resign and may not be removed by the Members for any reason other than a breach of the Managing Member's standard of care, as set forth in Section 7.6.

7.8 Other Activities. The Managing Member shall not be required to devote its full time to the management of the Company business, but only so much of its time as the Managing Member deems necessary or appropriate for the proper management of such business. The Managing Member, and any of its Affiliates, may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description including without limitation the acquisition, ownership, management and operation of other real estate, and the operation and management of other Organizations for the acquisition, ownership, management and operation of other properties[, **including those located near the Asset,**] in competition with the Company or otherwise, and neither the Company nor any Member shall have any rights in or to such ventures or the income or profits derived therefrom.

7.9 Distributions. Each Member shall look solely to the assets of the Company for all Distributions and a share of Profits or Losses and shall have no recourse therefor (upon dissolution or otherwise) against the Managing Member or the other Members. No Member

shall have any right to demand or receive Property other than money upon dissolution and termination of the Company.

7.10 Expenses. The Company shall pay directly or reimburse the Managing Member for certain expenses of the Company incurred by the Managing Member in the management of the Company's business. Such expenses may include but are not limited to: (a) costs of borrowed money and taxes applicable to the Company; (b) fees and expenses paid to suppliers, tradespeople, brokers, consultants and other agents; (c) costs of insurance as required in connection with the conduct of the business of the Company; and (d) expenses incurred by the Company for tax return preparation.

7.11 Affiliates; Fees. The Managing Member is specifically authorized to employ, contract and deal with, from time to time, any member or Affiliate of any Member, and in connection therewith to pay such Person's fees, prices or other compensation; provided that such employment, contracts and dealings are necessary or appropriate for the Company's purposes, and the fees, prices or other compensation paid by the Company therefor is, in the judgment of the Managing Member, reasonable and typical or competitive with the fees, prices or other compensation customarily paid for similar Property or services.

Nothing herein contained shall be construed as a guaranty by the Managing Member of the performance by any Affiliate, designee or nominee of its obligations under any contract between any such Affiliate, designee or nominee and the Company.

ARTICLE VIII CONTRIBUTIONS AND CAPITAL ACCOUNTS

8.1 Initial Capital Contributions. Each Member shall make the Initial Capital Contribution described for that Member on Exhibit A and shall perform that Member's Commitment. No Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in the Company Agreement.

8.2 Additional Capital Contributions. In the event the Managing Member determines that the Company does not have sufficient operating revenues or other available funds to pay any amount which the Managing Member determines to be required for any Company purpose, the Managing Member shall, if reasonable under the circumstances, attempt to obtain financing in the amount required; provided, however, that the Managing Member shall not obtain such financing if it would cause a default under any Company obligation. In the event that such financing cannot be obtained within a reasonable time and upon terms and conditions approved by the Managing Member, the Managing Member may, upon 15 days notice to the Members, call for an Additional Capital Contribution from the Members in the required amount. Such Additional Capital Contributions shall thereupon be made by the Members in proportion to their respective Sharing Ratios.

8.3 Enforcement of Commitments. In the event any Member (a "Delinquent Member") fails to perform the Delinquent Member's Commitment, the Managing Member shall give the Delinquent Member a notice of such failure. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure and interest at

the Default Interest Rate) within ten Business Days of the giving of such notice, the Managing Member may take such action as it deems appropriate, including but not limited to:

(a) Enforcing the Commitment in the court of appropriate jurisdiction in the state in which the Principal Office is located or the state of the Delinquent Member's address as reflected in the Company Agreement; provided, however, that a Member shall have no personal liability for any such Additional Capital Contribution and, in any proceeding to enforce the obligation of a Member to make all or part of any such Additional Capital Contribution, the Managing Member shall have recourse solely to the Delinquent Member's interest in the Company. Each Member expressly agrees to the jurisdiction of such courts but only for purposes of such enforcement.

(b) Selling the Delinquent Member's Membership Interest, including a sale to another Member or to another Person.

(c) Allowing Members, except the Delinquent Member, to make Additional Contributions and adjusting the Sharing Ratios and Membership Interests of the Members in proportion to the new Capital Contribution levels.

(d) Reducing the Delinquent Member's Membership Interest and Sharing Ratio.

(e) Issuing new Membership Interests to Members who make Additional Contributions in place of the Delinquent Member; provided that such Membership Interests may be entitled to a priority return and such other rights as shall be determined by the Managing Member.

8.4 Capital Account. A separate capital account shall be maintained for each Member throughout the term of the Company in accordance with the rules of section 1.704-1(b)(2)(iv) of the Regulations as in effect from time to time, and, to the extent not inconsistent therewith, to which the following provisions apply:

(a) Each Member's Capital Account shall be credited with (i) such Member's Capital Contribution; and (ii) such Member's share of Profits and items of income and gain that are specially allocated to such Member pursuant to Article IX (other than any income or gain allocated to such Member pursuant to Section 9.4(h) in accordance with section 704(c) of the Code.

(b) Each Member's Capital Account shall be debited with: (i) the amount of money distributed to such Member by the Company (including liabilities of such Member assumed by the Company as provided in section 1.704-1(b)(2)(iv)(c) of the Regulations) other than amounts which are in repayment of debt obligations of the Company to such Member; (ii) the Gross Asset Value of Property distributed to such Member (net of liabilities secured by such distributed Property that such Member is considered to assume or take subject to under section 752 of the Code); and (iii) such Member's share of Losses and items of loss and deduction that are specially allocated to such Member pursuant to Article IX (other than any deduction or loss allocated to such Member pursuant to Section 9.4(h) in accordance with section 704(c) of the Code).

(c) All such contributions, allocations and Distributions shall be credited or charged, as the case may be, to the appropriate Capital Accounts of the respective Members to whom they apply, as of the time the contributions, allocations or Distributions are made.

(d) The Capital Account of a transferee Member shall include the appropriate portion of the Capital Account of the Member from whom the transferee Member's interest was obtained.

(e) In determining the amount of any liability, there shall be taken into account section 752(c) of the Code and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Company Agreement relating to the maintenance of Capital Accounts are intended to comply with section 1.704-1(b) of the Regulations, and shall be interpreted and applied in a manner consistent with such Regulations. Consistent with such intention, the value of any Property (other than cash) (i) contributed to the Company by a Member, (ii) distributed to a Member from the Company or (iii) owned by the Company and subject to a revaluation upon the occurrence of certain events shall be the Fair Market Value of such Property (net of liabilities secured by such Property that the Company or such Member, as the case may be, is considered to assume or take subject to under section 752 of the Code) on the date of contribution, Distribution or revaluation, as applicable.

8.5 No Obligation to Restore Deficit Balance. No Member shall be required to restore any deficit balance in its Capital Account.

8.6 Withdrawal; Successors. A Member shall not be entitled to withdraw any part of its Capital Account or to receive any Distribution from the Company, except as specifically provided in the Company Agreement, and no Member shall be entitled to make any capital contribution to the Company other than such Member's Commitment.

8.7 Interest. Except as otherwise provided in this Company Agreement, no Member shall be entitled to interest or other return on such Member's Capital Contribution or on any Profits retained by the Company.

8.8 Investment of Capital Contributions and Company Cash. The Capital Contributions of the Members and any cash held by the Company from time to time shall be invested, until such time as such funds shall be used for other Company purposes, by the Managing Member in demand, money market or time deposits, obligations, securities, investments or other instruments constituting cash equivalents. Such investments shall be made by the Managing Member for the benefit of the Company.

8.9 Repayment of Capital Contribution.

(a) The Managing Member shall have no personal liability for the repayment of any Capital Contributions of any Member, and no Member shall have liability for the repayment of any Capital Contributions of any other Member. The repayment of any

Capital Contribution shall be made only to the extent of available Company assets in accordance with the terms of this Company Agreement.

(b) Except as otherwise provided in this Company Agreement, no Member shall have priority over any other Member as to the return of its Capital Contribution or as to Distributions of cash made by the Company.

(c) Except as otherwise provided in this Company Agreement, a Member shall not be entitled to (i) demand or receive Property other than cash in return for its Capital Contribution or (ii) receive any funds or Property of the Company.

ARTICLE IX ALLOCATIONS AND DISTRIBUTIONS

9.1 **Profits and Losses.** Profits and Losses, and each item of Company income, gain, loss, deduction, credit and tax preference with respect thereto, for each Fiscal Year (or shorter period in respect of which such items are to be allocated) shall be allocated among the Members as provided in this Article IX.

9.2 **Profits.** After giving effect to the special allocations set forth in Sections 9.4 and 9.5, Profits for any Fiscal Year shall be allocated in the following order of priority:

(a) First, to the Members, if any, who received any allocation of Losses under Section 9.3(c), in proportion to (and to the extent of) the excess, if any, of (i) the cumulative Losses allocated to such Members pursuant to Section 9.3(c) for all prior Fiscal Years, over (ii) the cumulative Profits allocated to such Members pursuant to this Section 9.2(a) for all prior Fiscal Years;

(b) Second, to the Members, in proportion to (and to the extent of) the excess, if any, of (i) the cumulative Losses allocated to each Member pursuant to Section 9.3(a) hereof for all prior Fiscal Years, over (ii) the cumulative Profits allocated to each Member pursuant to this Section 9.2(b) for all prior Fiscal Years; and

(c) Third, the balance of the Profits remaining to the Members in accordance with their Sharing Ratios.

9.3 **Losses.** After giving effect to the special allocations set forth in Sections 9.4 and 9.5, Losses shall be allocated as set forth in Section 9.3(a), subject to the limitation in Section 9.3(b) below and, if applicable, as provided in Section 9.3(c).

(a) Losses for any Fiscal Year shall be allocated in the following order of priority:

(i) First, to the Members in proportion to and to the extent of the excess, if any, of (A) the cumulative Profits allocated to each such Member pursuant to Section 9.2(c) hereof for all prior Fiscal Years, over (B) the cumulative Losses allocated to such Member pursuant to this Section 9.3(a)(i) for all prior Fiscal Years; and

(ii) The balance, if any, among the Members in proportion to their respective Sharing Ratios.

(b) (i) The Losses allocated according to Section 9.3(a) shall not exceed the maximum amount of Losses that may be allocated to such Member without causing such Member to have an Adjusted Capital Account Deficit.

(ii) If some, but not all of the Members would have Adjusted Capital Account Deficits as a consequence of the allocations of Losses pursuant to Section 9.3(a), the limitation set forth in this Section 9.3(b) shall be applied by allocating Losses pursuant to this Section 9.3(b)(ii) only to those Members (allocated pro rata if more than one), who would not have an Adjusted Capital Account Deficit as a consequence of receiving such an allocation of Losses.

(iii) If no other Member may receive an additional allocation of Losses pursuant to Section 9.3(b)(ii), such additional Losses not allocated shall be allocated solely to those Members who bear the economic risk of such Losses within the meaning of section 704(b) of the Code.

(c) In the event that there are any remaining Losses in excess of the limitations set forth in Section 9.3(b), such remaining losses shall be allocated among the Members in proportion to their respective Sharing Ratios.

9.4 Special Allocations. The following special allocations shall be made:

(a) Minimum Gain Chargeback. Except as otherwise provided in section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article IX, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.4(a) is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Partner Minimum Gain Chargeback. Except as otherwise provided in section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article IX, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain as of the beginning of the Fiscal Year attributable to such Partner Nonrecourse Debt, determined in accordance with section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt

Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with section 1.704-2(i)(4) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.4(b) is intended to comply with the minimum gain chargeback requirement in section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or Distributions described in section 1.704-1(b)(2)(ii)(d)(4), section 1.704-1(b)(2)(ii)(d)(5) or section 1.704-1(b)(2)(ii)(d)(6) of the Regulations which increase a Member's Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 9.4(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IX have been tentatively made as if this Section 9.4(c) were not in this Company Agreement.

(d) Gross Income Allocation. In the event any Member has an Adjusted Capital Account Deficit, such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.4(d) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IX have been made as if Section 9.4(c) and this Section 9.4(d) were not in this Company Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their Sharing Ratios.

(f) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with section 1.704-2(i)(1) of the Regulations.

(g) Certain Book-ups. To the extent an adjustment to (i) the adjusted tax basis of any Company asset pursuant to section 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts or (ii) pursuant to section 1.704-1(b)(2)(iv)(f) of the Regulations, the Gross Asset Value of any Company asset is permitted to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated, as provided in section 1.704-1(b)(2)(iv)(m) or 1.704-1(b)(2)(iv)(g) of the Regulations, respectively, as an item of Profit (if the adjustment increases such basis or Gross Asset Value of the asset) or Loss (if the adjustment decreases such basis or Gross Asset Value), and such Profit or Loss shall be specially allocated to the Members in a manner consistent with the manner in

which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(h) Mandatory Allocations under Section 704(c) of the Code.

(i) In the event section 704(c) of the Code or the principles of section 704(c) of the Code applicable under section 1.704-1(b)(2)(iv) of the Regulations require allocations of income, gain, deduction or loss in a manner different than that set forth above, the provisions of section 704(c) of the Code and the Regulations thereunder shall control such allocations among the Members. Any item of Company income, gain, loss and deduction with respect to any Property (other than cash) that has been contributed by a Member to the capital of the Company and which is required or permitted to be allocated to such Member for income tax purposes under section 704(c) of the Code so as to take into account the variation between the tax basis of such Property and its Fair Market Value at the time of its contribution shall be allocated solely for income tax purposes in the manner so required or permitted under section 704(c) of the Code using the "traditional method" described in section 1.704-3(b) of the Regulations, provided, however, that any other method allowable under applicable Regulations may be used for any contribution of Property as to which there is agreement between the contributing Member and the Managing Member.

(ii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 9.4(g) in accordance with section 1.704-1(b)(2)(iv)(f) of the Regulations, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in a manner consistent with Section 9.4(h)(i).

(iii) Except as provided in Sections 9.4(h)(i) and (ii), for United States federal, state and local income tax purposes, the income, gains, losses and deductions of the Company shall, for each taxable period, be allocated among the Members in the same manner and in the same proportion that such items have been allocated among the Members' respective Capital Accounts.

9.5 Curative Allocations. The allocations set forth in Sections 9.3(b) and 9.4(a) through (f) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction. Therefore, notwithstanding any other provision of this Article IX (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Company Agreement and all Company items were allocated pursuant to Sections 9.2 and 9.3(a). In exercising its discretion under this Section 9.5, the Managing Member (i) shall take into

account future Regulatory Allocations under Sections 9.4(a) and 9.4(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.4(e) and 9.4(f).

9.6 Section 754 Election. Upon a transfer by a Member of an interest in the Company, which transfer is permitted by the terms of this Company Agreement, or upon the death of a Member or the Distribution of any Company Property to one or more Members, the Managing Member, upon the request of one or more of the transferees or distributees, shall cause the Company to file an election on behalf of the Company, adjusted for federal income tax purposes in the manner prescribed in section 734 or 743 of the Code, as the case may be. The cost of preparing such election and any additional accounting expenses of the Company occasioned by such election, shall be borne by such transferees or distributees.

9.7 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses or any other item allocable to any period (including allocations to take into account any changes in any Member's Sharing Ratio during a Fiscal Year and any transfer of any interest in the Company), Profits, Losses and any such other item shall be determined on a daily, monthly or other basis, as determined by the Managing Member using any permissible method under section 706 of the Code and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article IX and hereby agree to be bound by the provisions of this Article IX in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of section 1.752-3(a)(3) of the Regulations, the Members' interests in Company Profits are in proportion to their Sharing Ratios.

(d) To the extent permitted by section 1.704-2(h)(3) of the Regulations, the Managing Member shall endeavor to treat Distributions as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such Distributions would not cause or increase an Adjusted Capital Account Deficit for any Member.

(e) Except as otherwise provided in this Article IX, an allocation of Company Profits or Losses to a Member shall be treated as an allocation to such Member of the same share of each item of income, gain, loss and deduction taken into account in computing such Profits or Losses.

(f) For purposes of determining the character (as ordinary income or capital gain) of any Profits allocated to the Members pursuant to this Article IX, such portion of Profits that is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (i) the amount of depreciation previously allocated to each Member bears to (ii) the total of such depreciation allocated to all Members. This Section 9.7(f) shall not alter the amount

of allocations among the Members pursuant to this Article IX, but merely the character of income so allocated.

(g) Except for arrangements expressly described in this Company Agreement, no Member shall enter into (or permit any Person related to the Member to enter into) any arrangement with respect to any liability of the Company that would result in such Member (or a person related to such Member under section 1.752-4(b) of the Regulations) bearing the economic risk of loss (within the meaning of section 1.752-2 of the Regulations) with respect to such liability unless such arrangement has been approved by all Members. To the extent a Member is permitted to guarantee the repayment of any Company indebtedness under this Company Agreement, each of the other Members shall be afforded the opportunity to guarantee such Member's pro rata share of such indebtedness, determined in accordance with the Members' respective Sharing Ratios.

9.8 Distribution of Net Cash Flow.

(a) Amounts and Timing. Subject to the provisions of Section 13.3, Net Cash Flow for each Fiscal Year of the Company, to the extent not distributed previously under this Section 9.8, shall be distributed to the Members, at such time or times as may be designated by the Managing Member, in proportion to the amount of Profits allocated to each Member.

(b) Amounts Withheld. All amounts required to be withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Section 9.8 for all purposes under this Company Agreement. The Managing Member is authorized to withhold from Distributions, or with respect to allocations, to the Members and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law, and shall allocate any such amounts to the Members with respect to which such amount was withheld.

(c) Draws for Payment of Estimated Taxes. The Company shall pay to each Member a quarterly draw, not to exceed the amount reasonably necessary to provide for payment by the Members of any federal, state and local estimated taxes with respect to Profits allocated to the Members pursuant to this Article IX, and each such draw, if any, shall be treated as a loan from the Company to each Member receiving such draw and shall be deemed repaid by reducing the amount of each subsequent Distribution to the Member receiving such draw pursuant to this Section 9.8 by the lesser of (i) the entire amount otherwise distributable to the Member receiving such draw and (ii) the entire amount of any unrepaid draws pursuant to this Section 9.8(c).

9.9 Allocation of Gain or Loss upon Winding Up.

(a) Gain Realized on Sale of Company Property. Upon the winding up of the Company, as provided in Article XIII, net gain realized on the sale or sales of Company

Property (each such sale a "Winding Up Sale") shall be allocated among the Members in accordance with Section 9.2.

(b) Loss Realized on Sale of Company Property. Net loss realized on any Winding Up Sale shall be allocated among the Members in accordance with Section 9.3.

(c) Distributions in Kind. In the event that, upon a winding up of the Company, pursuant to Section 13.3, either (i) any Company Property is required to be distributed in kind, or (ii) the Managing Member elects to distribute any Company Property in kind, the book value of such Property shall be adjusted to its Fair Market Value as of the date of such Distribution, and the amount of such adjustments shall be allocated to the Members' capital accounts in the manner and priorities provided in Sections 9.9(a) and (b) as though such Property had been sold at its Fair Market Value and gain or loss had been realized.

ARTICLE X TAXES

10.1 **Tax Matters Partner.** Managing Member shall be the Tax Matters Partner of the Company pursuant to section 6231(a)(7) of the Code. If the Managing Member shall cease to act as the Tax Matters Partner for any reason, the Members shall select another Member (subject to such Member's approval) to be the Tax Matters Partner. The Company has designated another Member as Tax Matters Partner and such Member has given its consent in writing to its appointment as Tax Matters Partner. The Tax Matters Partner shall receive no additional compensation from the Company for its services in that capacity, but all expenses incurred by the Tax Matters Partner in such capacity shall be borne by the Company. The Tax Matters Partner is authorized to employ such accountants, attorneys and agents as it, in its sole discretion, determines is necessary to or useful in the performance of its duties. The Tax Matters Partner is authorized to represent the Company before the Internal Revenue Service and any other governmental agency with jurisdiction, and to sign such consents and to enter into settlements and other agreements with such agencies as the Tax Matters Partner or its duly authorized officer deems necessary or advisable. Each Member shall give prompt notice to each other Member of any and all notices it receives from the Internal Revenue Service concerning the Company, including any notice of a 30 day appeal letter and any notice of deficiency in tax concerning the Company's federal income tax returns. The Tax Matters Partner shall give each Member periodic status reports regarding any negotiations between the Internal Revenue Service and the Company. The Tax Matters Partner shall serve in a similar capacity with respect to any similar tax related or other election provided by state or local laws.

ARTICLE XI TRANSFER OF MEMBERSHIP INTEREST

11.1 **Compliance with Securities Laws.** No Membership Interest has been registered under the Securities Act or under any applicable state securities laws. A Member may not transfer (a transfer, for purposes of this Company Agreement, shall be deemed to include, but not be limited to, any sale, transfer, assignment, pledge, creation of a security interest or other disposition) all or any part of such Member's Membership Interest, except upon compliance with

the applicable federal and state securities laws. The Managing Member shall have no obligation to register any Member's Membership Interest under the Securities Act or under any applicable state securities laws, or to make any exemption therefrom available to any Member.

11.2 Transfer of Economic Interest. The Economic Interest of any Member may not be transferred in whole or in part unless the following terms and conditions have been satisfied:

(a) The transferor shall have: (i) assumed all costs incurred by the Company in connection with the transfer, (ii) furnished the Company with a written opinion of counsel, satisfactory in form and substance to counsel for the Company, that such transfer complies with applicable federal and state securities laws and the Company Agreement and will not result in the Company being treated as a publicly traded partnership for purposes of section 7704 of the Code and (iii) complied with such other conditions as the Managing Member may reasonably require from time to time; and

(b) The transferee shall have assumed the obligations, if any, of the transferor to the Company, including the obligation to fulfill the pro rata portion of the transferor's then existing or subsequently arising Commitment related to the transferred Economic Interest or portion thereof.

Transfers of Economic Interests will be recognized by the Company as effective only upon the close of business on the last day of the calendar month following satisfaction of the above conditions. Any transfer in contravention of this Article XI and any transfer which if made would cause a termination of the Company for federal income tax purposes under section 708(b) of the Code shall be void when made and ineffectual and shall not bind the Company or the other Members.

11.3 Status of Transferee of Economic Interest. A transferee of an Economic Interest who is not admitted as a Substitute Member shall be entitled only to receive that share of Profits, Losses and Distributions, and the return of Capital Contribution and Distributions upon a dissolution of the Company, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have any Management Rights of a Member of the Company under the NY LLC Law or this Company Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals to, any matter. The Company shall, if a transferee and transferor jointly advise the Company in writing of a transfer of the Economic Interest, furnish the transferee with pertinent tax information at the end of each Fiscal Year.

11.4 Transfer of Management Rights; Admission of Substitute Member. A Member may transfer Management Rights and give the transferee the right to become a Member only after the following terms and conditions have been satisfied:

(a) The transferee shall also be the transferee of all or part of the transferor's Economic Interest, or shall be the owner of an Economic Interest;

(b) The Members holding at least a majority of the Membership Interests shall have consented in writing to the admission of the Substitute Member, which consent may be arbitrarily withheld by any such Member; and

(c) The transferor and the transferee shall have complied with such other requirements as the non-transferring Members may reasonably impose, including the conditions that the transferee:

(i) Adopt and approve in writing all the terms and provisions of the Company Agreement then in effect; and

(ii) Pay such fees as the Managing Member may reasonably require to pay the costs of the Company in effecting such substitution.

11.5 Transfer to Surviving Spouse or Lineal Descendent. If, by reason of the death of a Member, all or part of such Member's Economic Interest is transferred to the surviving spouse or to a lineal descendent of such Member (a "Permitted Transferee"), pursuant to the last will and testament of, or inter vivos trust created by, such Member, or pursuant to the laws of descent and distribution applicable to such Member's estate, such Permitted Transferee shall be admitted as a Substitute Member upon satisfaction of the terms and conditions of Section 11.4(c), to the extent applicable.

11.6 Death, Dissolution, Bankruptcy or Incompetency of a Member. Upon the death, dissolution, adjudication of bankruptcy, insanity or incompetency of a Member, such Member's successors, executors, administrators or legal representatives shall have all the rights of a Member (except as provided by the last sentence of this Section 11.6) for the purpose of settling or managing such Member's estate, including such power as such Member possessed to substitute a successor as a transferee of such Member's interest in the Company and to join with such transferee in making the application to substitute such transferee as a Member. However, except as provided in Section 11.5, such successors, executors, administrators or legal representatives will not have the right to become a Substitute Member in the place of their predecessor in interest unless the other Members shall so consent as provided in Section 11.4(b) hereof.

11.7 Dispositions not in Compliance with this Article Void. Any attempted Disposition of a Membership Interest, or any part thereof, not in compliance with this Article shall be void when made and ineffectual and shall not bind the Company.

ARTICLE XII DISSOCIATION OF A MEMBER

12.1 Dissociation. A Person shall cease to be a Member upon the happening of any of the following events:

- (a) The resignation or withdrawal of a Member;
- (b) A Member becoming a Bankrupt Person;

(c) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

(d) In the case of a Member that is a trust or who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) In the case of a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;

(f) In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(g) In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

12.2 Rights of Dissociating Member. In the event any Member dissociates prior to the expiration of the term of this Company Agreement:

(a) If the Dissociation causes a dissolution and winding up of the Company under Article XIII, the Member shall be entitled to participate in the winding up of the Company to the same extent as any other Member except that, if such Dissociation results from a withdrawal of a Member in violation of this Company Agreement, any Distributions to which such Member would have been entitled shall be reduced by that portion of the damages, if any, sustained by the Company as a result of the Dissolution Event and winding up that is chargeable to the Capital Accounts of the other Members; or

(b) If the Dissociation does not cause a dissolution and winding up of the Company under Article XIII, the Member shall be entitled to an amount equal to the value of the Member's Membership Interest in the Company, to be paid over a period not to exceed five years together with interest at the minimum rate necessary to avoid the imputation of interest under the Code. The value of the Member's Membership Interest shall include the amount of any Distributions to which the Member is entitled under the Company Agreement and the value of the Member's Membership Interest as of the date of Dissociation as determined by independent appraisal, reduced by an allocable portion of any damages sustained by the Company as a result of the Member's Dissociation.

ARTICLE XIII DISSOLUTION AND WINDING UP

13.1 Dissolution. The Company shall be dissolved without further action by the Members and its affairs wound up upon the first to occur of any of the following events (each of which shall constitute a Dissolution Event):

(a) The expiration of the term of the Company Agreement, unless the Company is continued with the consent of all of the Members;

(b) The written consent of the Members holding at least two-thirds of the Membership Interests; and

[(c) At any time when there is but one Member.]

13.2 Effect of Dissolution. Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed and articles of dissolution have been filed with the Department of State of New York.

13.3 Distribution of Assets on Dissolution. Upon the winding up of the Company, the Managing Member (or, if there is no Managing Member then remaining, such other Person(s) designated by the Members representing at least a majority of the Members' Membership Interests) shall take full account of the assets and liabilities of the Company, shall liquidate the assets (unless the Managing Member determines that a Distribution of any Company Property in-kind would be more advantageous to the Members than the sale thereof) as promptly as is consistent with obtaining the Fair Market Value thereof, and shall apply and distribute the proceeds therefrom in the following order:

(a) First, to the payment of the debts and liabilities of the Company to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of such debts and liabilities, and to the payment of necessary expenses of liquidation;

(b) Second, to the setting up of any reserves which the Managing Member may deem necessary or appropriate for any anticipated obligations or contingencies of the Company arising out of or in connection with the operation or business of the Company. Such reserves may be paid over by the Managing Member to an escrow agent or trustee selected by the Managing Member to be disbursed by such escrow agent or trustee in payment of any of the aforementioned obligations or contingencies and, if any balance remains at the expiration of such period as the Managing Member shall deem advisable, shall be distributed by such escrow agent or trustee in the manner hereinafter provided; and

(c) Then, to the Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year in which the liquidation occurs. Such Distributions shall be in cash or Property (which need not be distributed proportionately) or partly in both, as determined by the Managing Member.

If at the time of liquidation the Managing Member shall determine that an immediate sale of some or all Company Property would cause undue loss to the Members, the Managing Member may, in order to avoid such loss, defer liquidation.

13.4 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining Property of the Company has been distributed to the Members. Within 90 days following the

dissolution and commencement of the winding up of the Company, articles of dissolution shall be filed with the Department of State of New York. The articles of dissolution shall set forth the information required by the NY LLC Law.

ARTICLE XIV MISCELLANEOUS

14.1 **Notices.** Notices to the Managing Member shall be sent to the principal office of the Company. Notices to the other Members shall be sent to their addresses set forth on Exhibit A. Any Member may require notices to be sent to a different address by giving notice to the other Members in accordance with this Section 14.1. Any notice or other communication required or permitted hereunder shall be in writing, and shall be deemed to have been given with receipt confirmed if and when delivered personally, given by prepaid telegram or mailed first class, postage prepaid, delivered by courier, or sent by facsimile, to such Members at such address.

14.2 **Meetings.** A meeting of the Members may be called by the Managing Member at any time, and shall be called at the written request of the Members holding at least a majority of the Membership Interests. Written notice stating the place and time of the meeting, and the purpose thereof shall be given by the Managing Member to each Member at least ten days before the meeting.

14.3 **Headings.** All Article and Section headings in the Company Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.

14.4 **Entire Agreement.** This Company Agreement constitutes the entire agreement among the parties and supersedes any prior agreement or understanding among them respecting the subject matter of this Company Agreement.

14.5 **Binding Agreement.** This Company Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators, except as otherwise provided herein.

14.6 **Saving Clause.** If any provision of this Company Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Company Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Company Agreement would contravene the provisions of the NY LLC Law, such provision shall be void and ineffectual.

14.7 **Counterparts.** This Company Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of either the Company Agreement or the Articles of Organization shall for all purposes be deemed a fully executed instrument.

14.8 Governing Law. This Company Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.

14.9 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the NY LLC Law, and expressly do not intend hereby to form a partnership under either the New York Uniform Partnership Law or the New York Uniform Limited Partnership Law. The Members do not intend to be partners one to another or partners as to any third party. To the extent any Member, by word or action, represents to another person that any Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Members who incur personal liability by reason of such wrongful representation.

14.10 No Rights of Creditors and Third Parties under Company Agreement. The Company Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their permitted successors and assignees. The Company Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or any third party shall have any rights under the Company Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

14.11 Dispute Resolution. Whenever the Members shall have any dispute among themselves relating to the interpretation, construction or implementation of this Company Agreement or shall be deadlocked or shall otherwise be in dispute with respect to the relations among the Members or between the Members and the Company or any other matter related thereto, the Members shall resolve such dispute as follows:

(a) First, each Member involved in such dispute shall use its good faith efforts to negotiate a resolution thereof by engaging in discussions with the other Members so involved at reasonable times and places, by telephone or otherwise, during the 30 day period following notice by a Member to each of the other Members of its belief that there is a dispute which requires resolution in such manner;

(b) Second, if the Members are unable to resolve such dispute through good faith negotiations during the 30 day period provided in Section 14.11(a), the Members shall submit such dispute to an arbitration procedure that shall be selected by the Members involved in such dispute; and

(c) Third, if the Members are unable to resolve such dispute through the arbitration procedure selected by them, any Member involved in such dispute may bring an action or proceeding in any court having jurisdiction thereof; provided that (i) a Member may object to the venue of such action or proceeding or that such court does not have jurisdiction over such Member and (ii) each Member waives its right to trial by jury and its right to consequential, special and/or punitive damages.

14.12 General Interpretive Principles. For purposes of this Company Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) The terms defined in this Company Agreement include the plural as well as the singular;
- (b) Accounting terms not otherwise defined herein have the meanings given to them in the United States in accordance with generally accepted accounting principles;
- (c) References herein to "Sections," "paragraphs" and other subdivisions without reference to a document are to designated Sections, paragraphs and other subdivisions of this Company Agreement;
- (d) A reference to a paragraph without further reference to a Section is a reference to such paragraph as contained in the same Section in which the reference appears, and this rule shall also apply to other sub-divisions;
- (e) The words "herein," "hereof," "hereunder" and other words of similar import refer to this Company Agreement as a whole and not to any particular provision; and
- (f) The term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of the Effective Date.

THE COMPANY:

By: NB [Signature]
 Managing Member

By: NB [Signature]
 Name: NICK BARONE
 Title:

MANAGING MEMBER:

By: NB [Signature]
 Name: NICK BARONE
 Title:

MEMBERS:

RB Ralph Barone

EXHIBIT A

Name and Address of Member	Initial Capital Contribution	Initial Membership Interest and Initial Sharing Ratio
Nick Barone 1840 67th Street Brooklyn, NY 11204		50%
Ralph Barone 252 Tennyson Drive Staten Island, NY 10308		50%

Exhibit C



EXHIBIT C

Consent of the Lessee

EXTRACT from the minutes of a meeting of the members of 128 44th Realty Holding LLC (this "Company") held on August 29, 2007.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"CONSENTED, that this Company authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency") and Barone Steel Fabricators, Inc. (the "Sublessee") in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, and the renovation of such buildings located at 128 44th Street, Brooklyn, New York, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project"); and further

CONSENTED, that each of the following documents, substantially in the form of the drafts on file with the members of this Company, is hereby authorized and any member of this Company is directed to execute and deliver each such documents in the name and on behalf of this Company with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing member may determine, with advice of counsel, as conclusively evidenced by such member's execution thereof, to be advisable and in the best interest of this Company:

1. Company Lease Agreement between this Company and the Agency;
2. Lease Agreement between the Agency and this Company;
3. Sublease Agreement between this Company and the Sublessee;
4. Guaranty Agreement from this Company, the Sublessee, and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency;
5. Letter of Authorization for Sales Tax Exemption from the Agency to this Company;
6. Letter of Representation from this Company, the Sublessee and the Individual Guarantors to the Agency and SI Bank & Trust (Sovereign Bank) (the "First Mortgagee");
7. Two (2) Mortgage, Security Agreement and Assignment of Leases and Rents from this Company and the Agency to the First Mortgagee;

8. Mortgage and Security Agreement from this Company to Empire State Certified Development Corporation; and further

CONSENTED, that there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

CONSENTED, that all action taken and all instruments executed by authorized members of this Company prior to the adoption of this consent with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

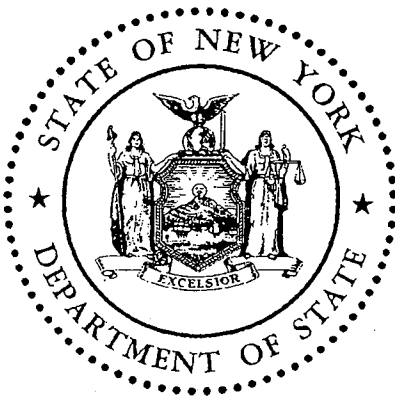
CONSENTED, that in addition to and without limiting the generality of the foregoing consents with respect to the Project, any member of this Company be, and each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such member with advice of counsel may deem appropriate to carry out the foregoing consents; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing member that such action or execution was appropriate and in the best interests of this Company.”



State of New York
Department of State } **SS:**

I hereby certify, that 128 44TH REALTY HOLDING LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 05/17/2007, and that the Limited Liability Company is existing so far as shown by the records of the Department.

I further certify, that no other documents have been filed by such Limited Liability Company.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 25th day of July
two thousand and seven.*

A handwritten signature in black ink, appearing to read "Daniel Shapiro".

Daniel Shapiro
Special Deputy Secretary of State

**SECRETARY'S CERTIFICATE OF
BARONE STEEL FABRICATORS, INC.**

The undersigned Secretary of Barone Steel Fabricators, Inc. (the "Sublessee")
HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), 128 44th Realty Holding LLC (the "Lessee") and the Sublessee in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

2. Attached hereto as Exhibit A is a true, correct and complete copy of the certificate of incorporation of the Sublessee, certified by the Secretary of State of the State of New York, together with amendments thereto as in effect on the date hereof.

3. Attached hereto as Exhibit B is a true, correct and complete copy of the bylaws of the Sublessee, together with all amendments thereto as in effect on the date hereof.


4. Attached hereto as Exhibit C is a true, correct and complete copy of resolutions duly adopted by the Board of Directors of the Sublessee, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of the Sublessee with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the officer of the Sublessee named below.

5. Each document relating to the Project required to be executed by the Sublessee has been executed on behalf of the Sublessee by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified officer of the Sublessee holding the office set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Nicky Barone	President	

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this August 29, 2007.

BARONE STEEL FABRICATORS, INC.

By: 
Nicky Barone
Secretary:

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STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
August 21, 2007.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

fy80722000259

**Certificate of Incorporation of
BARONE STEEL FABRICATORS INC.**

under Section 402 of the Business Corporation Law

IT IS HEREBY CERTIFIED THAT:

- (1) The name of the proposed corporation is
BARONE STEEL FABRICATORS INC.
- (2) The purpose or purposes for which this corporation is formed, are as follows, to wit:
To engage in any lawful act or activity for which corporations may be organized under the Business Corporation Law. The corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body, without which such consent or approval first being obtained.

The corporation, in furtherance of its corporate purposes above set forth, shall have all of the powers enumerated in Section 202 of the Business Corporation Law, subject to any limitations provided in the business Corporation Law or any other statute of the State of New York.

(3) The office of the corporation is to be located in the
County of KINGS
State of New York

(4) The aggregate number of shares which the corporation
shall have the authority to issue is

200 No Par Value

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(5) The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is

THE CORPORATION
C/O MANNING & CO.
65 OAK LANE

STATEN ISLAND, N.Y. 10312

- (6) A director of the corporation shall not be liable to the corporation or its shareholders for damages for any breach of duty in such capacity except for
- (i) liability if a judgement or other final adjudication adverse to a director establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the director personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that the director's acts violated BCL # 719, or
 - (ii) liability for any act or omission prior to the adoption of this provision

The undersigned incorporator, or each of them if there are more than one, is of the age of eighteen years or over.

IN WITNESS WHEREOF, this certificate has been subscribed on JULY 15, 1998 by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

Leonard Manning
LEONARD MANNING 65 OAK LANE STATEN ISLAND, N.Y. 10312

f 980722000-259

Certificate of Incorporation
of
BARONE STEEL FABRICATORS INC.

under Section 402 of the Business Corporation Law

FILED BY:
LEONARD MANNING
65 OAK LANE
STATEN ISLAND, N.Y. 10312

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RECEIVED

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 22 1988
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Exhibit B

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BY-LAWS

OF

BARONE STEEL FABRICATORS, INC.

ARTICLE I - OFFICES

The office of the Corporation shall be located in the City, County and State designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the United States as the Board of Directors may, from time to time, determine.

ARTICLE II - MEETING OF SHAREHOLDERS

Section 1 - Annual Meetings:

The annual meeting of the shareholders of the Corporation shall be held within five months after the close of the fiscal year of the Corporation, for the purpose of electing directors, and transacting such other business as may properly come before the meeting.

Section 2 - Special Meetings:

Special meetings of the shareholders may be called at any time by the Board of Directors or by the President, and shall be called by the President or the Secretary at the written request of the holders of ten per cent (10%) of the shares then outstanding and entitled to vote thereat, or as otherwise required under the provisions of the Business Corporation Law.

Section 3 - Place of Meetings:

All meetings of shareholders shall be held at the principal office of the Corporation, or at such other places within or without the State of New York as shall be designated in the notices or waivers of notice of such meetings.

Section 4 - Notice of Meetings:

(a) Written notice of each meeting of shareholders, whether annual or special, stating the

time when and place where it is to be held, shall be served either personally or by mail, not less than ten or more than fifty days before the meeting, upon each shareholder of record entitled to vote at such meeting, and to any other shareholder to whom the giving of notice may be required by law. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called, and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If, at any meeting, action is proposed to be taken that would, if taken, entitle shareholders to receive payment for their shares pursuant to the Business Corporation Act, the notice of such meeting shall include a statement of that purpose and to that effect. If mailed, such notice shall be directed to each such shareholder at his address, as it appears on the records of the shareholders of the Corporation, unless he shall have previously filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which case, it shall be mailed to the address designated in such request.

(b) Notice of any meeting need not be given to any person who may become a shareholder of record after the mailing of such notice and prior to the meeting, or to any shareholder who attends such meeting, in person or by proxy, or to any shareholder who, in person or by proxy, submits a signed waiver of notice either before or after such meeting. Notice of any adjourned meeting of shareholders need not be given, unless otherwise required by statute.

Section 5 - Quorum:

(a) Except as otherwise provided herein, or by statute, or in the Certificate of Incorporation (such Certificate and any amendments thereof being hereinafter collectively referred to as the "Certificate of Incorporation"), at all meetings of shareholders of the Corporation, the presence at the commencement of such meetings in person or by proxy of shareholders holding of record a majority of the total number of shares of the Corporation then issued and outstanding and entitled to vote, shall be necessary and sufficient to constitute a quorum for the transaction of any business. The withdrawal of any shareholder after the commencement of a meeting shall have no effect on the existence of a quorum, after a quorum has been established at such meeting.

(b) Despite the absence of a quorum at any annual or special meeting of shareholders, the shareholders, by a majority of the votes cast by the holders of shares entitled to vote thereon, may adjourn the meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been present.

Section 6 - Voting:

(a) Except as otherwise provided by statute or by the Certificate of Incorporation, any corporate action, other than the election of directors to be taken by vote of the shareholders, shall be authorized by a majority of votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

(b) Except as otherwise provided by statute or by the Certificate of Incorporation, at each meeting of shareholders, each holder of record of stock of the Corporation entitled to vote thereat, shall be entitled to one vote for each share of stock registered in his name on the books of the Corporation.

(c) Each shareholder entitled to vote or to express consent or dissent without a meeting, may do so by proxy; provided, however, that the instrument authorizing such proxy to act shall have been executed in writing by the shareholder himself, or by his attorney-in-fact thereunto duly authorized in writing. No proxy shall be valid after the expiration of eleven months from the date of its execution, unless the persons executing it shall have specified therein the length of time it is to continue in force. Such instrument shall be exhibited to the Secretary at the meeting and shall be filed with the records of the Corporation.

(d) Any resolution in writing, signed by all of the shareholders entitled to vote thereon, shall be and constitute action by such shareholders to the effect therein expressed, with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of shareholders and such resolution so signed shall be inserted in the Minute Book of the Corporation under its proper date.

ARTICLE III - BOARD OF DIRECTORS

Section 1 - Number, Election and Term of Office:

(a) The number of the directors of the Corporation shall be one (1), unless and until otherwise determined by vote of a majority of the entire Board of Directors. The number of Directors shall not be less than three, unless all of the outstanding shares are owned beneficially and of record by less than three shareholders, in which event the number of directors shall not be less than the number of shareholders.

(b) Except as may otherwise be provided herein or in the Certificate of Incorporation, the members of the Board of Directors of the Corporation, who need not be shareholders, shall be elected by a majority of the votes cast at a meeting of shareholders, by the holders of shares entitled to vote in the election.

(c) Each director shall hold office until the annual meeting of the shareholders next succeeding his election, and until his successor is elected and qualified, or until his prior death, resignation or removal.

Section 2 - Duties and Powers:

The Board of Directors shall be responsible for the control and management of the affairs, property and interests of the Corporation, and may exercise all powers of the Corporation, except as are in the Certificate of Incorporation or by statute expressly conferred upon or reserved to the shareholders.

Section 3 - Annual and Regular Meetings; Notice:

(a) A regular annual meeting of the Board of Directors shall be held immediately following the annual meeting of the shareholders at the place of such annual meeting of shareholders.

(b) The Board of Directors, from time to time, may provide by resolution for the holding of other regular meetings of the Board of Directors, and may fix the time and place thereof.

(c) Notice of any regular meeting of the Board of Directors shall not be required to be given and, if given, need not specify the purpose of the meeting; provided, however, that in case the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each director who shall not have been present at the meeting at which such action was taken within the time limited, and in the

manner set forth in paragraph (b) of Section 4 of this Article III, with respect to special meetings, unless such notice shall be waived in the manner set forth in paragraph (c) of such Section 4.

Section 4 - Special Meetings; Notice:

(a) Special meetings of the Board of Directors shall be held whenever called by the President or by one of the directors, at such time and place as may be specified in the respective notices or waivers of notice thereof.

(b) Notice of special meetings shall be mailed directly to each director, addressed to him at his residence or usual place of business, at least two (2) days before the day on which the meeting is to be held, or shall be sent to him at such place by telegram, radio or cable, or shall be delivered to him personally or given to him orally, not later than the day before the day on which the meeting is to be held. A notice, or waiver of notice, except as required by Section 8 of this Article III, need not specify the purpose of the meeting.

(c) Notice of any special meeting shall not be required to be given to any director who shall attend such meeting without protesting prior thereto or at its commencement, the lack of notice to him, or who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

Section 5 - Chairman:

At all meetings of the Board of Directors, the Chairman of the Board, if any and if present, shall preside. If there shall be no Chairman, or he shall be absent, then the President shall preside, and in his absence, a Chairman chosen by the Directors shall preside.

Section 6 - Quorum and Adjournments:

(a) At all meetings of the Board of Directors, the presence of a majority of the entire Board shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by law, by the Articles of Incorporation, or by these By-Laws. Participation of any one or more members of the Board by means of a conference telephone or similar communications equipment, allowing all persons participating in the meeting to hear each other at the same time, shall constitute presence in person at any such meeting.

(b) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice, until a quorum shall be present.

Section 7 - Manner of Acting:

(a) At all meetings of the Board of Directors, each director present shall have one vote, irrespective of the number of shares of stock, if any, which he may hold.

(b) Except as otherwise provided by statute, by the Certificate of Incorporation, or these By-Laws, the action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any action authorized, in writing, by all of the directors entitled to vote thereon and filed with the minutes of the Corporation shall be the act of the Board of Directors with the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board.

Section 8 - Vacancies:

Any vacancy in the Board of Directors occurring by reason of an increase in the number of directors, or by reason of the death, resignation, disqualification, removal (unless a vacancy created by the removal of a director by the shareholders shall be filled by the shareholders at the meeting at which the removal was effected) or inability to act of any director, or otherwise, shall be filled for the unexpired portion of the term by a majority vote of the remaining directors, though less than a quorum, at any regular meeting or special meeting of the Board of Directors called for that purpose.

Section 9 - Resignation:

Any director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and the acceptance of such resignation shall not be necessary to make it effective.

Section 10 - Removal:

Any director may be removed with or without cause at any time by the shareholders, at a special meeting of the shareholders called for that purpose, and may be removed for cause by action of the Board.

Section 11 - Salary:

No stated salary shall be paid to directors, as such, for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; provided, however, that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 12 - Contracts:

(a) No contract or other transaction between this Corporation and any other Corporation shall be impaired, affected or invalidated nor shall any director be liable in any way by reason of the fact that any one or more of the directors of this Corporation is or are interested in, or is a director or officer, or are directors or officers of such other Corporation, provided that such facts are disclosed or made known to the Board of Directors.

(b) Any director, personally and individually, may be a party to or may be interested in any contract or transaction of this Corporation, and no director shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided that the Board of Directors shall authorize, approve or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum, notwithstanding the presence of any such director at the meeting at which such action is taken. Such director or directors may be counted in determining the presence of a quorum at such meeting. This Section shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory or otherwise) applicable thereto.

Section 13 - Committees:

The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members an executive committee and such other committees, and alternate members thereof, as they deem desirable, each consisting of three or more members, with such powers and authority (to the extent permitted by law) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board. At all meetings of a committee, the presence of all members of the committee shall be necessary to constitute a quorum for the transaction of business, except as otherwise provided by said resolution or by these By-laws. Participation of any one or more members of the committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time, shall constitute presence in person at any such meeting. Any action authorized in writing by all of the members of a committee entitled to vote thereon and filed with the minutes of the Committee shall be the act of the committee with the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the committee.

ARTICLE IV - OFFICERS

Section 1 - Number, Qualifications, Election
and Term of Office:

(a) The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such other officers, including a Chairman of the Board of Directors, and one or more Vice Presidents, as the Board of Directors may from time to time deem advisable. Any officer other than the Chairman of the Board of Directors may be, but is not required to be, a director of the Corporation. Any two or more offices may be held by the same person.

(b) The officers of the Corporation shall be elected by the Board of Directors at the regular annual meeting of the Board following the annual meeting of shareholders.

(c) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election, and until his successor shall have been elected and qualified, or until his death, resignation or removal.

Section 2 - Resignation:

Any officer may resign at any time by giving written notice of such resignation to the Board of Directors, or to the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or by such officer, and the acceptance of such resignation shall not be necessary to make it effective.

Section 3 - Removal:

Any officer may be removed, either with or without cause, and a successor elected by the Board at any time.

Section 4 - Vacancies:

A vacancy in any office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by the Board of Directors.

Section 5 - Duties of Officers:

Officers of the Corporation shall, unless otherwise provided by the Board of Directors, each have such powers and duties as generally pertain to their respective offices as well as such powers and duties as may be set forth in these by-laws, or may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Corporation.

Section 6 - Sureties and Bonds:

In case the Board of Directors shall so require, any officer, employee or agent of the Corporation shall execute to the Corporation a bond in such sum, and with such surety or sureties as the Board of Directors may direct, conditioned upon the faithful performance of his duties to the Corporation, including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his hands.

Section 7 - Shares of Other Corporations:

Whenever the Corporation is the holder of shares of any other corporation, any right or power of the Corporation as such shareholder (including the attendance, acting and voting at shareholders' meetings and execution of waivers, consents, proxies or other instruments) may be exercised on behalf of the Corporation by the President, any Vice President, or such other person as the Board of Directors may authorize.

ARTICLE V - SHARES OF STOCK

Section 1 - Certificate of Stock:

- (a) The certificates representing shares of the Corporation shall be in such form as shall be adopted by the Board of Directors, and shall be numbered and registered in the order issued. They shall bear the holder's name and the number of shares, and shall be signed by (i) the Chairman of the Board or the President or a Vice President, and (ii) the Secretary or Treasurer, or any Assistant Secretary or Assistant Treasurer, and may bear the corporate seal.
- (b) No certificate representing shares shall be issued until the full amount of consideration therefor has been paid, except as otherwise permitted by law.
- (c) The Board of Directors may authorize the issuance of certificates for fractions of a share which shall entitle the holder to exercise voting rights, receive dividends and participate in liquidating distributions, in proportion to the fractional holdings; or it may authorize the payment in cash of the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or it may authorize the issuance, subject to such conditions as may be permitted by law, of scrip in registered or bearer

form over the signature of an officer or agent of the Corporation, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder, except as therein provided.

Section 2 - Lost or Destroyed Certificates:

The holder of any certificate representing shares of the Corporation shall immediately notify the Corporation of any loss or destruction of the certificate representing the same. The Corporation may issue a new certificate in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed. On production of such evidence of loss or destruction as the Board of Directors in its discretion may require, the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the Corporation a bond in such sum as the Board may direct, and with such surety or sureties as may be satisfactory to the Board, to indemnify the Corporation against any claims, loss, liability or damage it may suffer on account of the issuance of the new certificate. A new certificate may be issued without requiring any such evidence or bond when, in the judgment of the Board of Directors, it is proper so to do.

Section 3 - Transfers of Shares:

(a) Transfers of shares of the Corporation shall be made on the share records of the Corporation only by the holder of record thereof, in person or by his duly authorized attorney, upon surrender for cancellation of the certificate or certificates representing such shares, with an assignment or power of transfer endorsed thereon or delivered therewith, duly executed, with such proof of the authenticity of the signature and of authority to transfer and of payment of transfer taxes as the Corporation or its agents may require.

(b) The Corporation shall be entitled to treat the holder of record of any share or shares as the absolute owner thereof for all purposes and, accordingly, shall not be bound to recognize any legal, equitable or other claim to, or interest in, such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law.

Section 4 - Record Date:

In lieu of closing the share records of the Corporation, the Board of Directors may fix, in advance, a date not exceeding fifty days, nor less than ten days, as the record date for the determination of shareholders entitled to receive notice of, or to vote at, any meeting of shareholders, or to consent to any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividends, or allotment of any rights, or for the purpose of any other action. If no record date is fixed, the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the directors relating thereto is adopted. When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided for herein, such determination shall apply to any adjournment thereof, unless the directors fix a new record date for the adjourned meeting.

ARTICLE VI - DIVIDENDS

Subject to applicable law, dividends may be declared and paid out of any funds available therefor, as often, in such amounts, and at such time or times as the Board of Directors may determine.

ARTICLE VII - FISCAL YEAR

The fiscal year of the Corporation shall be fixed by the Board of Directors from time to time, subject to applicable law.

ARTICLE VIII - CORPORATE SEAL

The corporate seal, if any, shall be in such form as shall be approved from time to time by the Board of Directors.

Exhibit C

Faint, illegible text at the top of the page, possibly a header or page number.



EXHIBIT C

Authorizing Resolutions of Barone Steel Fabricators, Inc.

EXTRACT from the minutes of a meeting of the Board of Directors of Barone Steel Fabricators, Inc. (this "Company") held on August 29, 2007.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Company authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency") and 128 44th Realty Holding LLC (the "Lessee") in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, and the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the Company's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Board of Directors of this Company, is hereby authorized and the President or any officer is directed to execute and deliver each such documents in the name and on behalf of this Company with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Company:

1. Sublease Agreement between this Company and the Lessee;
2. Guaranty Agreement from this Company, the Lessee and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency; and
3. Letter of Representation from this Company, the Lessee and the Individual Guarantors to the Agency and SI Bank & Trust (Sovereign Bank); and further

RESOLVED, that there is hereby approved the Lease Agreement between the Agency and the Lessee and there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by authorized officers of this Company prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any officer or officers of this Company be, and

each of them hereby is, authorized and directed to take such further action in connection with the Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Company.”



State of New York
Department of State } SS:

I hereby certify, that the Certificate of Incorporation of BARONE STEEL FABRICATORS, INC. was filed on 07/22/1998, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:

A Biennial Statement was filed 10/04/2004.

A Biennial Statement was filed 09/15/2006.

I further certify, that no other documents have been filed by such Corporation.



*Witness my hand and the official seal
of the Department of State at the City
of Albany, this 17th day of August
two thousand and seven.*

Daniel Shapiro
Special Deputy Secretary of State



**SECRETARY'S CERTIFICATE OF
BAR FAB STEEL CORP.**

The undersigned Secretary of Bar Fab Steel Corp. (the "Bar Fab") HEREBY CERTIFIES THAT:

1. This certificate is furnished in connection with the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), 128 44th Realty Holding LLC (the "Lessee") and the Barone Steel Fabricators Inc. (the "Sublessee") in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

2. Attached hereto as Exhibit A is a true, correct and complete copy of the certificate of incorporation of the Bar Fab, certified by the Secretary of State of the State of New York, together with amendments thereto as in effect on the date hereof.

3. Attached hereto as Exhibit B is a true, correct and complete copy of the bylaws of the Bar Fab, together with all amendments thereto as in effect on the date hereof.

4. Attached hereto as Exhibit C is a true, correct and complete copy of resolutions duly adopted by the Board of Directors of the Bar Fab, which resolutions have not been revoked, modified, amended or rescinded and are still in full force and effect, and authorize the obligations of the Bar Fab with respect to the Project, and which further authorize the execution and delivery of all necessary documents by the officer of Bar Fab named below.

5. Each document relating to the Project required to be executed by the Sublessee has been executed on behalf of Bar Fab by the person named below, who is duly authorized and empowered to execute such documents. The below-named person is the duly elected and qualified officer of the Sublessee holding the office set forth opposite his name, and the signature below set forth opposite his name is his genuine signature:

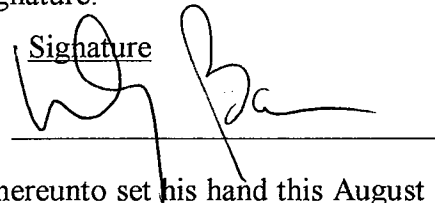
Name

Office

Signature

Nicky Barone

President



IN WITNESS WHEREOF, the undersigned has hereunto set his hand this August 29, 2007.

BAR FAB STEEL CORP.

By: Ralph Barone
Ralph Barone
Secretary:

[Faint, illegible handwritten text or markings along the right edge of the page]

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
August 21, 2007.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

050505000730

CERTIFICATE OF INCORPORATION

OF

BARFAB STEEL CORP.

Pursuant to Section 402 of the Business Corporation Law

I, the undersigned, a natural person of at least 18 years of age, for the purpose of forming a corporation under Section 402 of the Business Corporation Law of the State of New York hereby certify:

FIRST: The name of the corporation is:

BARFAB STEEL CORP.

SECOND: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under Article IV of the Business Corporation Law, except that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

THIRD: The office of the corporation is to be located in the County of **KINGS**, State of New York.

FOURTH: The aggregate number of shares which the corporation shall have the authority to issue is **TWO HUNDRED**, each of which shall be common stock with no par value.

FIFTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

**C/O THE CORPORATION
264 40TH STREET
BROOKLYN, NY 11232**

SIXTH: No director of the corporation shall have personal liability to the corporation or to its shareholders for damages for any breach of duty in such capacity, provided, however, that the provision shall not eliminate or limit:

(a) the liability of any director of the corporation if a judgment or other final adjudication adverse to him establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled or, with respect to any director of the corporation, that his acts violated Section 719 of the Business Corporation Law of the State of New York, or

(b) the liability of a director for any act or omission prior to the final adoption of this article.

SEVENTH: The holders of any of the corporation's equity shares shall be entitled to preemptive rights in accordance with the provisions of BCL section 622.

IN WITNESS WHEREOF, the undersigned incorporator has executed this certificate of incorporation.

5/5/05



Sharon Babala, Incorporator
BlumbergExcelsior Corporate
Services, Inc.
52 South Pearl Street
Albany, New York 12207

F 050505000 730

Certificate of Incorporation

of

BARFAB STEEL CORP.

Pursuant to Section 402 of the Business Corporation Law

RECEIVED
2005 MAY 05 PM 12:04

BLU-39
DRAW DOWN

Filed By:
BlumbergExcelsior Corporate Services,
Inc.
52 South Pearl Street, 2nd Floor
Albany, NY 12207

2005 MAY -5 PM 3:50

FILED

3

STATE OF NEW YORK
DEPARTMENT OF STATE

MAY 05 2005

FILED TAXS 10
BY: Ken Kings

751

BY-LAWS

OF

BARFAB STEEL CORP.

Incorporated under the Business Corporation Law of the State of New York

1. PRINCIPAL OFFICE

(1.1) **Initial Location.** The principal office of the corporation shall initially be located at

264 40th Street
Brooklyn, NY 11232

(1.2) **Change of Location.** The board of directors may, upon reasonable written notice to all shareholders, relocate the principal office of the corporation.

(1.3) **Other Offices.** In addition to its principal office, the corporation may have such other offices, either within or without the state of incorporation, as the board of directors may designate.

2. DIRECTORS

(2.1) **Number.** The number of directors shall be that number as may from time to time be fixed by the board of directors, but not less than the minimum number required by law.

(2.2) **Qualification.** No person shall serve as a director unless such person is at least 18 years of age.

(2.3) **Notices.** Upon taking office, each director shall file with the secretary a written designation of the address that the director desires to be used for the purpose of giving notices to him/her. Until the director shall have effectively done so, he/she shall be deemed to have designated either the principal office of the corporation or any other address that the sender of the notice could reasonably believe to be an appropriate address. Any designated address may be redesignated by similar filing with the secretary. The secretary shall give each of the other directors prompt notice of every designation or re-designation filed. The designation or re-designation shall be effective three business days after the secretary's action or upon earlier receipt. Any notice to a director shall be valid if sent to either (a) the director's designated address or (b) any other address used in good faith unless it be shown that prejudice resulted from use of such other address. All notices must be in writing. Any notice may be

delivered by hand or sent by telecommunications device, by mail or by similar means. If a notice is sent by registered mail or return receipt requested, another copy shall at the same time be sent by ordinary first class mail.

(2.4) **Resignation.** A director may resign at any time by giving notice to each of the other directors. Unless otherwise specified, the notice shall be effective immediately and acceptance shall not be necessary to make it effective. A director need not assign cause for resigning.

(2.5) **Removal.** A director may be removed by the shareholders without cause or by the board of directors with cause.

3. **BOARD OF DIRECTORS**

(3.1) **Regular Meetings.** A regular meeting shall be held immediately after and at the same place as the annual meeting of shareholders. The board of directors may provide for other regular meetings. Notice need not be given of any regular meeting.

(3.2) **Special Meetings.** The president or any two directors may call a special meeting upon not less than 5 business days notice to every director of the time and place of the special meeting. The special meeting notice does not have to specify the business to be transacted.

(3.3) **Adjourned Meetings.** Whether or not a quorum is present, a majority of the directors present may adjourn any meeting to such time and place as they shall decide. Notice of any adjourned meeting need not be given. At any adjourned meeting, whether adjourned once or more, any business may be transacted that might have been transacted at the meeting of which it is an adjournment. Additional business may also be transacted if proper notice shall have been given.

(3.4) **Organization.** The chairperson of the meeting shall be the president if taking part in the meeting or, if not, any director elected by a majority of the directors present. The secretary of the meeting shall be the secretary if taking part in the meeting or, if not, any director appointed by the chairman of the meeting.

(3.5) **Committees.** The board of directors may, by resolution passed by a majority of the full board of directors (a) designate three or more of its number to constitute an executive committee, or one or more other committees, which, so far as may be permitted by law and to the extent and in that manner provided in said resolution, shall have and may exercise, between meetings of the board of directors, the powers of the board of directors in the management of the affairs and business of the corporation, (b) at any time change the members of any such committee, (c) fill vacancies in any such committee, and (d) discharge any such committee, with or without cause. The board of directors may provide for regular meetings of any such committee with or without notice as the board of directors may prescribe. To the extent authority of the board of directors has been delegated to any such committee, any reference in these by-laws to the board of directors shall be deemed a reference to such committee.

(3.6) **Telecommunications Participation.** Any one or more directors may participate in a meeting of the board or any committee by means of a conference telephone or other type of telecommunications equipment allowing persons participating in the meeting to hear each other at the same time.

(3.7) **Regulations.** The board of directors may adopt rules and regulations, not inconsistent with law, the certificate of incorporation or these by-laws, for the conduct of its meetings and the management of all aspects of the affairs of the corporation.

4. **SHARES AND CERTIFICATES**

(4.1) **Form of Certificates.** Certificates representing shares shall be in the form determined by the board of directors. All certificates issued shall be consecutively numbered or otherwise appropriately identified.

(4.2) **Share Transfer Ledger.** There shall be kept a share transfer ledger in which shall be entered full and accurate records including the names and addresses of all shareholders, the number of shares issued to each shareholder and the dates of issuance. All transfers of shares shall be promptly reflected in the share transfer ledger. Unless otherwise directed by the board of directors, the share transfer ledger shall be kept at the principal office of the corporation.

(4.3) **Transfer of Shares.** Upon (a) receipt of the certificate representing the shares to be transferred, either duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, (b) payment of any required transfer taxes, and (c) payment of any reasonable charge the board of directors may have established, the surrendered certificate shall be canceled and a new certificate or certificates shall be issued to the person(s) entitled to it.

(4.4) **Replacement Certificates.** Replacement certificates will be issued at the request of the shareholder upon payment of any reasonable charge the board of directors may have established. In case of a lost, mislaid, destroyed or mutilated certificate, proof of the facts, by affidavit or otherwise, may also be required, as may be a bond or other proper indemnification for the corporation and its agents.

(4.5) **Record Owner to be Treated as Owner.** Unless otherwise directed by a court of competent jurisdiction, the corporation shall treat the holder of record of any share as the holder in fact and accordingly shall not recognize any equitable or other claim to or interest in the shares on the part of any other persons, whether or not it shall have express or other notice of it.

5. **SHAREHOLDERS' MEETINGS**

(5.1) **Annual Meeting.** The annual meeting of the shareholders shall be held on the _____ in the month of _____ in each year at the principal office of the corporation. If the day fixed for the annual meeting is a Saturday, Sunday or holiday at the place it is to be held, the meeting shall be held on the following day that is not such a day. Unless otherwise stated in the notice of meeting pursuant to direction of the board of directors, the annual meeting shall be held at the principal office of the corporation.

(5.2) **Special Meetings.** A special meeting of the shareholders may be called by any two or more directors, the president or the holders of no less than 10% of all the shares entitled to vote at the meeting.

(5.3) **Adjourned Meetings.** Whether or not a quorum is present, a majority in voting power of the shareholders present in person or by proxy and entitled to vote may adjourn any meeting to a time and place as they shall decide. Notice of any adjourned meeting need not be given.

At any adjourned meeting, whether adjourned once or more, any business may be transacted that might have been transacted at the meeting of which it is an adjournment. Additional business may also be transacted if proper notice shall have been given.

(5.4) **Organization.** The president shall be chairman of the meeting. The secretary shall be secretary of the meeting. If neither the president nor any vice president is present, the shareholders shall choose a chairman of the meeting. If neither the secretary nor any assistant secretary is present, the chairman of the meeting shall appoint a secretary of the meeting.

(5.5) **Order of Business.** The order of business shall be as determined by the chairman of the meeting, but the order may be changed by a majority in voting power of the shareholders present in person or by proxy and entitled to vote. Unless otherwise determined as aforesaid, the order shall be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

(5.6) **Voting.** Upon demand of any shareholder, voting shall be by ballot, in which event each ballot shall be signed by the shareholder or his proxy and shall state the number shares voted. Otherwise, voting need not be in writing.

6. OFFICERS

(6.1) **Additional Officers.** In addition to the president, secretary, treasurer and any other officers required by law, the corporation may have one or more vice presidents elected by the board of directors, one of whom may be designated as executive vice president. The corporation may also have such other or assistant officers as may be elected by, or appointed in a manner prescribed by, the board of directors.

(6.2) **Seniority.** The executive vice president, if there is one, shall be deemed senior to all other vice presidents. Unless otherwise determined by, or under rules prescribed by, the board of directors, seniority of any officer shall be determined by length of continuous service in that office.

(6.3) **Continuation in Office.** Unless otherwise provided by the board of directors, every officer shall serve until death, incapacity, resignation or removal by the board of directors. Any resignation or removal shall be without prejudice to any contractual rights of the corporation or the officer.

(6.4) **Duties in General.** Subject to these by-laws, the authority and duties of all officers shall be determined by, or in the manner prescribed by, the board of directors. Except as may be specifically restricted by the board of directors, any officer may delegate any of his/her authority and duties to any subordinate officer.

(6.5) **Duties of the President.** The president shall be the principal executive officer of the corporation and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the corporation. The president may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments that the board of directors has authorized to be executed, except in cases where the signing and execution shall be expressly delegated by the board of directors or by these by-laws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

(6.6) **Duties of Vice Presidents.** In the absence or incapacity of the president, the senior vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Each vice president shall perform any other duties as may be assigned by the president or by the board of directors.

(6.7) **Duties of Secretary.** The secretary shall keep the minutes of the shareholders' and the directors' meetings in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these by-laws or as otherwise required, be custodian of the corporate records and of the seal of the corporation, keep a register of the post office addresses of each shareholder, have general charge of the share transfer books of the corporation, and in general perform all duties incident to the office of secretary and other duties as may be assigned by the president or by the board of directors.

(6.8) **Duties of Treasurer.** If required by the board of directors, the treasurer shall give a bond for the faithful discharge of his/her duties in a sum and with any surety or sureties as the board of directors shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in the banks, trust companies or other depositories as shall be selected in accordance with these by-laws, and in general perform all the duties incident to the office of treasurer and such other duties as may be assigned by the president or the board of directors.

(6.9) **Salaries.** No officer shall receive any salary unless provided or authorized by the board of directors. No officer shall be prevented from receiving a salary by reason of the fact that he/she is a director.

7. SEAL

(7.1) **Form.** The seal of the corporation shall be in the form impressed in the margin.

(7.2) **Use.** The seal may be used by causing it to be impressed directly on the instrument or writing to be sealed, or upon an adhesive substance annexed. The seal on certificates for shares or other documents may be a facsimile, engraved or imprinted.

8. **AMENDMENTS**

(8.1) **By Board.** These by-laws may be amended or repealed by the board of directors.



EXHIBIT C

Authorizing Resolutions of Bar Fab Steel Corp.

EXTRACT from the minutes of a meeting of the Board of Directors of Bar Fab Steel Corp. (this "Company") held on August 29, 2007.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that this Company authorizes and approves the straight-lease transaction with the New York City Industrial Development Agency (the "Agency"), Barone Steel Fabricators, Inc. (the "Sublessee) and 128 44th Realty Holding LLC (the "Lessee") in connection with the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, and the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").

RESOLVED, that each of the following documents, substantially in the form of the drafts on file with the Board of Directors of this Company, is hereby authorized and the President or any officer is directed to execute and deliver each such documents in the name and on behalf of this Company with such additions, deletions or modifications in or affecting each such documents thereof, or the effectiveness thereof, as such executing officer may determine, with advice of counsel, as conclusively evidenced by such officer's execution thereof, to be advisable and in the best interests of this Company:

1. Guaranty Agreement from this Company, the Lessee, the Sublessee, and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), to the Agency; and

2. Letter of Representation from this Company, the Sublessee, the Lessee and the Individual Guarantors to the Agency and SI Bank & Trust (Sovereign Bank); and further

RESOLVED, that there is hereby approved the Lease Agreement between the Agency and the Lessee and there is hereby approved the execution and delivery of any and all documents, certificates and agreements to effect the Project and all matters related thereto; and further

RESOLVED, that all action taken and all instruments executed by authorized officers of this Company prior to the adoption of this resolution with respect to the Project, and all matters related thereto, are hereby ratified, confirmed and approved; and further

RESOLVED, that in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, any officer or officers of this Company be, and each of them hereby is, authorized and directed to take such further action in connection with the

Project and to execute and deliver such instruments and documents as such officers with advice of counsel may deem appropriate to carry out the foregoing resolutions; and the taking of such action or execution of such instruments shall be deemed conclusive evidence of the determination of such executing officer that such action or execution was appropriate and in the best interests of this Company.”

State of New York
Department of State } SS:

I hereby certify, that the Certificate of Incorporation of BARFAB STEEL CORP. was filed on 05/05/2005, with perpetual duration, and that a diligent examination has been made of the Corporate index for documents filed with this Department for a certificate, order, or record of a dissolution, and upon such examination, no such certificate, order or record has been found, and that so far as indicated by the records of this Department, such corporation is an existing corporation. I further certify the following:

A Biennial Statement was filed 06/14/2007.

I further certify, that no other documents have been filed by such Corporation.



Witness my hand and the official seal
of the Department of State at the City
of Albany, this 17th day of August
two thousand and seven.

A handwritten signature in black ink, appearing to read "Daniel Shapiro".

Daniel Shapiro
Special Deputy Secretary of State





New York State Department of
Taxation and Finance
 Taxpayer Services and Revenue Division
 W A Harriman Campus
 Albany NY 12227

Tuesday, August 21, 2007

SN: 174801

RN: 21-A

Corporate Tax Search

EMPIRE CORPORATE SERVICES
 46 STATE ST, 2ND FLOOR
 ALBANY NY 12207
 Attention:

Articles 9, 9-A, 13,
 13A, 32, and 33.

Reference ID

Corporation name: **128 44TH REALTY HOLDING LLC**

<u>Incorp Date</u>	<u>Filing period</u>	<u>Termination date</u>	<u>Termination type</u>
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According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

No Record

Franchise tax payments are past due for period(s) ended:

License fee (Article 9, section 181): Other fees due Maintenance fee for period (s) ended:

Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

Need help?

Telephone assistance is available from 8:00 a.m. to 5:00 p.m. (eastern time), Monday through Friday.

Business Tax Information: 1 800 972-1233

Forms and Publications: 1 800 482-8100

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

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

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

Internet access: www.nysitax.gov

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

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



New York State Department of
Taxation and Finance
 Taxpayer Services and Revenue Division
 W A Harriman Campus
 Albany NY 12227

Tuesday, August 21, 2007

SN: 174800

RN: 21-A

Corporate Tax Search

EMPIRE CORPORATE SERVICES
 46 STATE ST, 2ND FLOOR
 ALBANY NY 12207
 Attention:

Articles 9, 9-A, 13,
 13A, 32, and 33.

Reference ID

Corporation name: **BARFAB STEEL CORP.**

<u>Incorp Date</u>	<u>Filing period</u>	<u>Termination date</u>	<u>Termination type</u>
05/05/2005	December		

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

None

Franchise tax payments are past due for period(s) ended:

None

Other fees due

License fee (Article 9, section 181):

Maintenance fee for period (s) ended:

Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

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Business Tax Information: 1 800 972-1233

Forms and Publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 465-6800

Fax-on-demand forms: 1 800 746-3676

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New York State Department of
Taxation and Finance
 Taxpayer Services and Revenue Division
 W A Harriman Campus
 Albany NY 12227

Thursday, August 23, 2007

SN: 175107

RN: 21-A

Corporate Tax Search

EMPIRE CORPORATE SERVICES
 46 STATE ST, 2ND FLOOR
 ALBANY NY 12207
 Attention:

Articles 9, 9-A, 13,
 13A, 32, and 33.

Reference ID

Corporation name: **BARONE STEEL FABRICATORS INC.**

<u>Incorp Date</u>	<u>Filing period</u>	<u>Termination date</u>	<u>Termination type</u>
07/22/1998	December		

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

12/31/1999 MTA Surcharge Report

Franchise tax payments are past due for period(s) ended:

12/31/1999 MTA Surcharge Tax

License fee (Article 9, section 181): _____ Other fees due _____
 Maintenance fee for period (s) ended: _____

Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

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Forms and Publications: 1 800 482-8100

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

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Internet access: www.nystax.gov



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

OWNER'S POLICY OF TITLE INSURANCE

Issued by **Lawyers Title Insurance Corporation**

POLICY NUMBER

C29-0023567



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, LAWYERS TITLE INSURANCE CORPORATION, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

LAWYERS TITLE INSURANCE CORPORATION

Attest:


Secretary



By:



President

Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE A

Name and Address of Title Insurance Company:

Lawyers Title Insurance Corporation
10 Bank Street, Suite 1120
White Plains, NY 10606

Title Number: RT-35185

Policy Number: C29-0023567

Date of Policy: August 29, 2007

County: Kings

Amount of Insurance: \$5,400,000.00

1. Name of Insured:

New York City Industrial Development Agency

2. The estate or interest in the land which is covered by this Policy is:

Leasehold

3. Title to the estate or interest in the land is vested in the insured by:

Lease Agreement dated 08/29/2007 made by 128 44th Realty Holding LLC to New York City Industrial Development Agency to be recorded in the City Register's Office of Kings County.

4. The land referred to in this Policy is described as follows:

See Attached Description.

Block: 735

Lot: 50

Property Address: 128 44th Street

Issued at NEW YORK, NEW YORK
COUNTERSIGNED


REGAL TITLE AGENCY
Authorized Agent

Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION

SCHEDULE A DESCRIPTION

Title Number: RT-35185

Policy Number C29-0023567

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of **BEGINNING**.

Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

Title Number: RT-35185

Policy Number: C29-0023567

This policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) which may arise by reason of:

1. **Rights of tenants or persons in possession.**
2. **Declaration of Covenants and Restrictions in Reel 2353 Page 490**
3. **The lien of vault charges, if any.**
4. **Liens pursuant to the Administrative Code of the City of New York may have attached and not been filed or recorded. No liability is assumed for same.**
5. **Section 26-128 (formerly 643a-14.0) of the Administrative Code of the City of New York, amended by LL 10 of 1981 and LL 25 of 1984, and Section 27-4029.1 of the Administrative Code of the City of New York, amended by LL 43 of 1988, created tax liens for unpaid inspection fees and permit fees, respectively, billed by the Building Department and the Fire Department, regardless of the fact that said fees may not be entered in the records of the City Collector. Policy excepts any loss, claim, or damage for any unpaid fee or charge claimed by the Building Department and the Fire Department entered in the records of the City Collector after the date of closing.**
6. **Subject to Rules, Regulations and By Laws of Monarch Property Owners Association, Inc.**
7. **The northwesterly, southeasterly and southwesterly wall(s) of the premises herein are party wall(s). Policy excepts the rights and easements of the owner(s) of the property abutting on the northwest, southeast and southwest by reason thereof.**

Notwithstanding, policy insures the continued use, maintenance and right of enclosure for so long as the building on the premises herein shall stand or for so long as the party wall shall stand, whichever is shorter.
8. **Declaration of Covenants, Restrictions, Easements, Charges and Liens in Reel 2353 Page 490. Please note: Said Agreement which the Monarch Owners Association was formed.**
9. **Survey made by Big Apple Land Surveyors, P.C. dated July 23, 2007 shows a three story building and high one story building. Party wall on southeast, northwest and southwest.**
10. **Mortgage in the amount of \$2,915,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.**
11. **Mortgage in the amount of \$1,945,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.**

LAWYERS TITLE INSURANCE CORPORATION

STANDARD NEW YORK ENDORSEMENT

(OWNER'S POLICY)

Title No. RT-35185

Attached to and made part of Policy Number C29-0023567

1. Covered Risk Number 2(c) is deleted.

2. The following is added as a Covered Risk:

"11. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

3. Exclusion Number 5 is deleted, and the following is substituted:

5. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

DATED: August 29, 2007

LAWYERS TITLE INSURANCE CORPORATION

BY Lima Clemente
Jules

LEASEHOLD ENDORSEMENT (OWNER'S POLICY)

Issued by **Lawyers Title Insurance Corporation**



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

Attached to and made a part of Policy No.: **C29-0023567** Title No.: **RT-35185**

1. As used in this endorsement, the following terms shall mean:

- a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by the Policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by the Policy.
- b. "Lease": the lease agreement described in Schedule A.
- c. "Leasehold Estate": the right of possession for the Lease Term.
- d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to such chattels and property or to the land to which they are affixed.
- f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by the Policy.
- g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

(continued on the reverse side hereof)

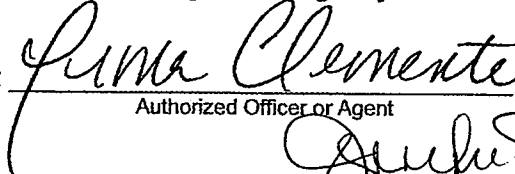
This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

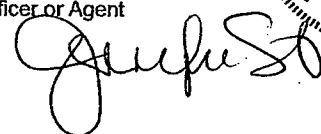
IN WITNESS WHEREOF, the Company has caused this endorsement to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

LAWYERS TITLE INSURANCE CORPORATION

Dated: **August 29th, 2007**

Countersigned: **Regal Title Agency**

By: 
Authorized Officer or Agent





By: 
President

Attest: 
Secretary

(continued from the reverse side hereof)

2. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as a result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by the Policy.

- a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
- b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.
- f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs, and fees, costs and interest on loans for the acquisition and construction.

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

SCHEDULE A

Name and Address of Title Insurance Company:

**Lawyers Title Insurance Corporation
10 Bank Street, Suite 1120
White Plains, NY 10606**

Title Number: **RT-35185**

Policy Number: **K56-0080635**

Date of Policy: **August 29, 2007**

County: **Kings**

Amount of Insurance: **\$2,915,000.00**

1. Name of Insured:

Sovereign Bank, its successors and/or assigns

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

128 44th Realty Holding LLC

4. The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage in the amount of \$2,915,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.

5. The land referred to in this Policy is described as follows:

See continuation of Schedule A attached.

Block: **735**

Lot: **50**

Property Address: **128 44th Street**

Issued at NEW YORK, NEW YORK

COUNTERSIGNED


REGAL TITLE AGENCY
Authorized Agent

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

SCHEDULE A DESCRIPTION

Title Number: RT-35185

Policy Number: K56-0080635

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

**SCHEDULE B
Part I
EXCEPTIONS FROM COVERAGE**

Title Number: RT-35185

Policy Number: K56-0080635

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Declaration of Covenants and Restrictions in Reel 2353 Page 490
2. Subject to Rules, Regulations and By Laws of Monarch Property Owners Association, Inc.
3. The northwesterly wall(s) of the premises herein are party wall(s). Policy excepts the rights and easements of the owner(s) of the property abutting on the northwest by reason thereof.

Notwithstanding, policy insures the continued use, maintenance and right of enclosure for so long as the building on the premises herein shall stand or for so long as the party wall shall stand, whichever is shorter.

4. Declaration of Covenants, Restrictions, Easements, Charges and Liens in Reel 2353 Page 490. Please note: Said Agreement which the Monarch Owners Association was formed.
5. Survey made by Big Apple Land Surveyors, P.C. dated July 23, 2007 shows a three story building and high one story building. Party wall on southeast, northwest and southwest.

**Regal Title Agency, LLC as agent for
LAWYERS TITLE INSURANCE CORPORATION**

Title Number: **RT-35185**

Policy Number: **K56-0080635**

**SCHEDULE B
PART II**

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Mortgage in the amount of \$1,945,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.

LAWYERS TITLE INSURANCE CORPORATION

STANDARD NEW YORK ENDORSEMENT

(LOAN POLICY)

Title No. RT-35185

Attached to and made part of Policy Number: **K56-0080635**

1. Covered Risk Number 2(c) is deleted if the Land is improved by other than a 1-4 family dwelling or is vacant land.

2. Exclusion Number 7 is deleted, and the following is substituted:

7. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

3. Covered Risk Number 11 is deleted, and the following is substituted:

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or materials furnished prior to the Date of Policy, and which has now gained or which may hereafter gain priority over the lien of the Insured Mortgage; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

DATED: August 29, 2007

LAWYERS TITLE INSURANCE CORPORATION

BY Juma Clemente

VARIABLE RATE MORTGAGE ENDORSEMENT

Issued by **Lawyers Title Insurance Corporation**



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

File No.: RT-35185

Attached to and made a part of Policy No.: K56-0080635

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the amount of insurance.

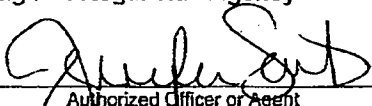
IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

LAWYERS TITLE INSURANCE CORPORATION



Dated: August 29th, 2007

Countersigned: Regal Title Agency

By: 
Authorized Officer or Agent


President

Attest:

Secretary

LAWYERS TITLE INSURANCE CORPORATION

WAIVER OF ARBITRATION ENDORSEMENT

(Loan Policy)

Title No. RT-35185

Attached to and made a part of Policy Number K56-0080635

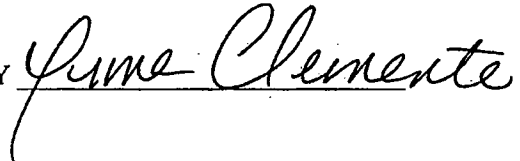
The policy is amended by deleting therefrom:

- (A) If this endorsement is attached to an ALTA Loan Policy: Condition and Stipulation Section 13.
- (B) If this endorsement is attached to an ALTA Owner's Policy: Condition and Stipulation Section 14.
- (C) If this endorsement is attached to a TIRSA Owner's Extended Protection Policy: Condition Number 12.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

DATED: August 29, 2007

LAWYERS TITLE INSURANCE CORPORATION

BY 

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT (NEW YORK CITY ONLY)

Issued by **Lawyers Title Insurance Corporation**



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

Attached to and made a part of Policy No.: K56-0080635 Title No.: RT-35185

The Policy insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B, or
- (b) any environmental protection lien provided for by any state statute, New York City Code and/or Ordinance in effect at Date of Policy, except environmental protection liens provided for by the following statutes:
 - (1) Administrative Code, City of New York, Title 17 (Health) Section 17-151.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the amount of insurance.

IN WITNESS WHEREOF, LAWYERS TITLE INSURANCE CORPORATION has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Endorsement to become valid when countersigned by an authorized officer or agent of the Company.

LAWYERS TITLE INSURANCE CORPORATION

Dated: August 29th, 2007

Countersigned: Regal Title Agency

By: *Yuma Clemente*
Authorized Officer or Agent



By: *Madame L. Chandler*
President

Attest: *Alma King*
Secretary

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

SCHEDULE A

Name and Address of Title Insurance Company:

**Lawyers Title Insurance Corporation
10 Bank Street, Suite 1120
White Plains, NY 10606**

Title Number: **RT-35185**

Policy Number: **K56-0080636**

Date of Policy: **August 29, 2007**

County: **Kings**

Amount of Insurance: **\$1,945,000.00**

1. Name of Insured:

Sovereign Bank, its successors and/or assigns

2. The estate or interest in the land which is encumbered by the insured mortgage is

Fee Simple

3. Title to the estate or interest in the land is vested in:

128 44th Realty Holding LLC

4. The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage in the amount of \$1,945,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.

5. The land referred to in this Policy is described as follows:

See continuation of Schedule A attached.

Block: **735**

Lot: **50**

Property Address: **128 44th Street**

Issued at NEW YORK, NEW YORK
COUNTERSIGNED


REGAL TITLE AGENCY
Authorized Agent

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

SCHEDULE A DESCRIPTION

Title Number: RT-35185

Policy Number: K56-0080636

BLOCK 735 LOT 50 ON THE TAX MAP OF KINGS COUNTY

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

**Regal Title Agency as agent for
LAWYERS TITLE INSURANCE CORPORATION**

**SCHEDULE B
Part I
EXCEPTIONS FROM COVERAGE**

Title Number: RT-35185

Policy Number: K56-0080636

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Declaration of Covenants and Restrictions in Reel 2353 Page 490
2. Subject to Rules, Regulations and By Laws of Monarch Property Owners Association, Inc.
3. The northwesterly wall(s) of the premises herein are party wall(s). Policy excepts the rights and easements of the owner(s) of the property abutting on the northwest by reason thereof.

Notwithstanding, policy insures the continued use, maintenance and right of enclosure for so long as the building on the premises herein shall stand or for so long as the party wall shall stand, whichever is shorter.

4. Declaration of Covenants, Restrictions, Easements, Charges and Liens in Reel 2353 Page 490. Please note: Said Agreement which the Monarch Owners Association was formed.
5. Survey made by Big Apple Land Surveyors, P.C. dated July 23, 2007 shows a three story building and high one story building. Party wall on southeast, northwest and southwest.
6. Mortgage in the amount of \$2,915,000.00 made by 128 44th Realty Holding LLC to Sovereign Bank, dated 08/29/2007 and recorded in the City Register's Office of Kings County.

VARIABLE RATE MORTGAGE ENDORSEMENT

Issued by **Lawyers Title Insurance Corporation**



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

File No.: RT-35185

Attached to and made a part of Policy No.: K56-0080636

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the amount of insurance.

IN WITNESS WHEREOF, the Company has caused this Endorsement to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

LAWYERS TITLE INSURANCE CORPORATION



Dated: August 29th, 2007

Theodore L. Chandler Jr.
President

Countersigned: Regal Title Agency

Attest:

By:
Authorized Officer or Agent

Secretary

LAWYERS TITLE INSURANCE CORPORATION

STANDARD NEW YORK ENDORSEMENT

(LOAN POLICY)

Title No. RT-35185

Attached to and made part of Policy Number: K56-0080636

1. Covered Risk Number 2(c) is deleted if the Land is improved by other than a 1-4 family dwelling or is vacant land.

2. Exclusion Number 7 is deleted, and the following is substituted:

7. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

3. Covered Risk Number 11 is deleted, and the following is substituted:

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or materials furnished prior to the Date of Policy, and which has now gained or which may hereafter gain priority over the lien of the Insured Mortgage; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

DATED: August 29, 2007

LAWYERS TITLE INSURANCE CORPORATION

BY Jana Clemente

LAWYERS TITLE INSURANCE CORPORATION

WAIVER OF ARBITRATION ENDORSEMENT

(Loan Policy)

Title No. RT-35185

Attached to and made a part of Policy Number K56-0080636

The policy is amended by deleting therefrom:

- (A) If this endorsement is attached to an ALTA Loan Policy: Condition and Stipulation Section 13.
- (B) If this endorsement is attached to an ALTA Owner's Policy: Condition and Stipulation Section 14.
- (C) If this endorsement is attached to a TIRSA Owner's Extended Protection Policy: Condition Number 12.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

DATED: August 29, 2007

LAWYERS TITLE INSURANCE CORPORATION

BY *Jana Clemente*

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT (NEW YORK CITY ONLY)

Issued by **Lawyers Title Insurance Corporation**



Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

Attached to and made a part of Policy No.: K56-0080636 Title No.: RT-35185

The Policy insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B, or
- (b) any environmental protection lien provided for by any state statute, New York City Code and/or Ordinance in effect at Date of Policy, except environmental protection liens provided for by the following statutes:
 - (1) Administrative Code, City of New York, Title 17 (Health) Section 17-151.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the amount of insurance.

IN WITNESS WHEREOF, LAWYERS TITLE INSURANCE CORPORATION has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Endorsement to become valid when countersigned by an authorized officer or agent of the Company.

LAWYERS TITLE INSURANCE CORPORATION

Dated: August 29th, 2007

Countersigned: Regal Title Agency

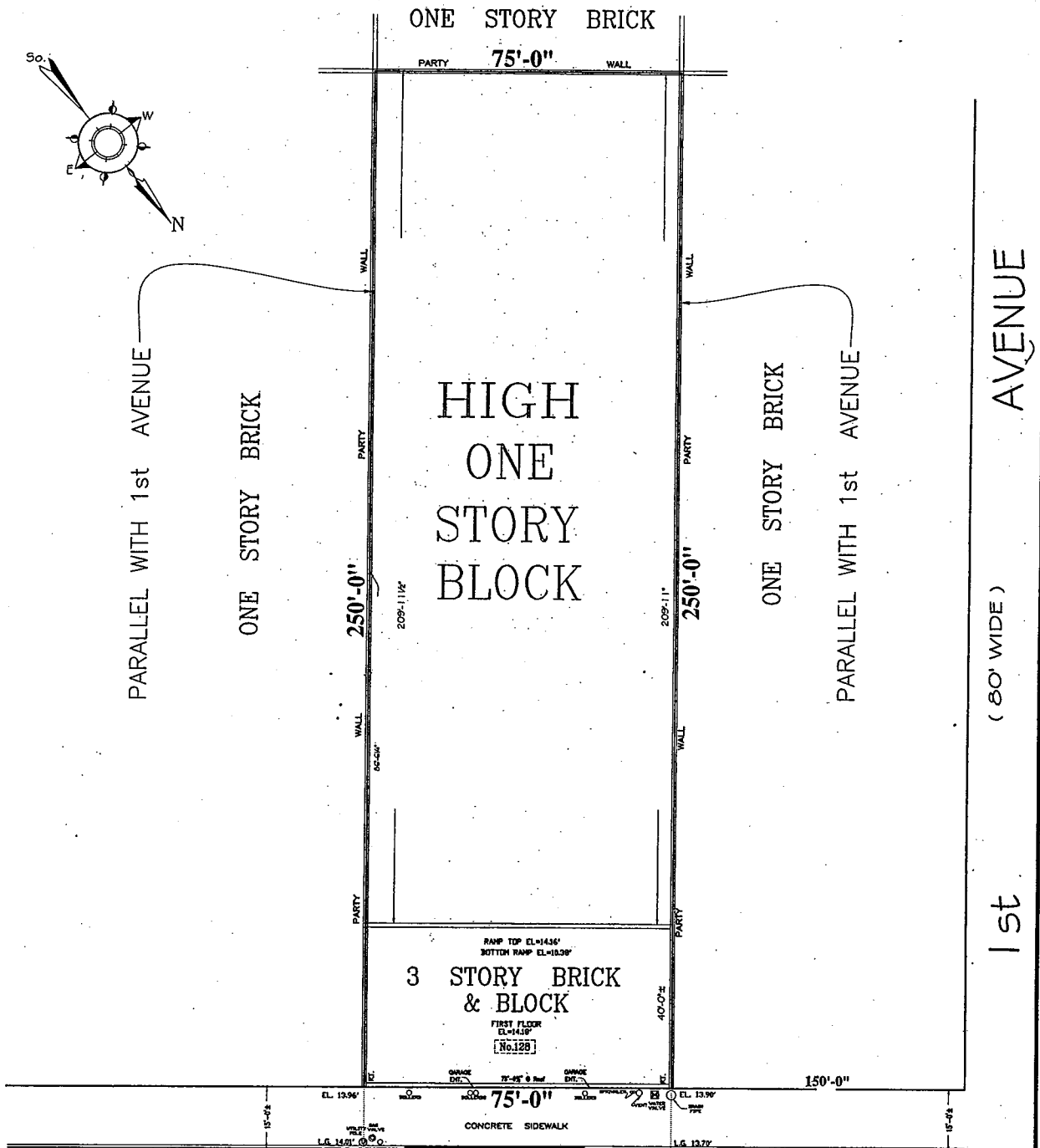
By: *Jana Clemente*
Authorized Officer or Agent



By: *Therese L. Chandler*
President

Attest: *Alvin H. [Signature]*
Secretary





UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS SURVEY IS A VIOLATION OF SECTION 7209 OF THE NEW YORK STATE EDUCATION LAW. COPIES OF THIS SURVEY MAP NOT BEARING THE LAND SURVEYOR'S INKED SEAL OR EMBOSSED SEAL SHALL NOT BE CONSIDERED TO BE A VALID TRUE COPY. GUARANTEES OR CERTIFICATIONS INDICATED HEREON SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED, AND ON HIS BEHALF TO THE TITLE COMPANY, GOVERNMENTAL AGENCY AND LENDING INSTITUTION LISTED HEREON, AND TO THE ASSIGNEES OF THE LENDING INSTITUTION. GUARANTEES OR CERTIFICATION ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

BLOCK: 735
LOT: 50
SECTION: 3
COUNTY: KINGS
DWG BY: CLAUDIA
CHK'D BY:

VINCENT M. PUNICO L.S., P.R.S.

BIG APPLE LAND SURVEYORS, P.C.
2390 McDONALD AVENUE
(REAR ENTRANCE)
BROOKLYN, N.Y. 11223
TEL. (718) 331-0800, FAX (718) 331-3380

SURVEYED
JULY 23, 2007

TITLE SURVEY

CERTIFIED ONLY TO:

- * 128 44th. REALTY HOLDING LLC
- * NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
- * SOVEREIGN BANK, ITS SUCCESSORS AND/OR ASSIGNS
- * REGAL TITLE AGENCY
- * LAWYER'S TITLE INSURANCE CORPORATION

SCALE: 1"=12'
GRAPHIC SCALE



H2 Consulting, PE PC

87 Walker Street, 3rd Floor, New York, NY 10013

Tel: 212-226-6090

Fax: 212-226-3583

August 28, 2007

New York City Industrial Development Agency
110 William Street
New York, NY 10038

Re: New York City Industrial Development Agency Project to assist
with the construction of [describe project improvements]
on certain premises located at 128 44th Street, Brooklyn,
New York (the "Premises")

To Whom It May Concern:

The undersigned ("Engineer") understands that New York City Industrial Development Agency ("IDA") is providing financial assistance to 128 44th Realty Holding LLC (the "Project Company"), which financial assistance will be used to assist the Project Company with the construction of the improvements described in Exhibit A attached hereto (the "Improvements") on the Premises (the "Project"). Engineer has been engaged to act as the engineer for the Improvements pursuant to the provisions of a certain architectural contract also described in Exhibit A attached hereto (the "Contract"). Engineer has prepared certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in Exhibit B attached hereto.

The undersigned Engineer does hereby certify and represent to you as follows:

1. The Engineer prepared and supervised the preparation of the Plans and Specifications.
2. All of the Improvements are located within the boundaries of the Premises and in accordance with all "set-back" requirements. To my knowledge after due inquiry, limited to an inspection of the Premises and the survey of the Premises, dated 7/23/07 prepared by Big Apple Land Surveyors PC (the "Survey"), the location of the Improvements, if constructed substantially in accordance with the Plans and Specifications, will not be affected by any existing easements affecting the Premises, nor will the Improvements be located within or encroach into any easement area, nor shall the location of the Improvements violate any restriction, condition or covenant affecting the Premises.

3. To the best of my knowledge, after due inquiry, the Plans and Specifications comply with all applicable federal, state and municipal laws, ordinances, rules and regulations regarding zoning, building and fire codes and ordinances. To my knowledge after due inquiry, limited to a review of the Title Report and the Survey, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will likewise comply with all covenants, conditions, easements and restrictions to which the Improvements are subject.
4. The Premises is zoned in accordance to the NYC Zoning Ordinance and such zoning classification permits the construction of the Improvements and the as contemplated in the Plans and Specifications and the intended use of the Premises by the Project Company.
5. The Premises does not require any additional on-site parking to satisfy all zoning and other governmental requirements. Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Premises, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans and Specifications. No easements over land of others is called for or indicated by the Plans and Specifications for access or egress to the Premises or parking on the Premises, or for any such facilities or utilities, and design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Plans and Specifications.
6. Water, sewer, drainage, gas, electric, telephone and other utilities required for the development and operation of the Improvements are available or have been included in the Plans and Specifications of sufficient design and capacity to meet the requirements of the Improvements.
7. The Premises constitutes one (1) legally subdivided zoning lots (Block 735, Lot 50) separate from any other parcel of real property.
8. The Budget (with projected draw schedule) attached hereto as Exhibit B is complete and accurately reflects the correct, anticipated cost and projected timing of construction of the Improvements as designed. The amounts set forth in the Budget are adequate and sufficient for satisfying all fees and expenses of Architect in designing the Improvements.
9. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.

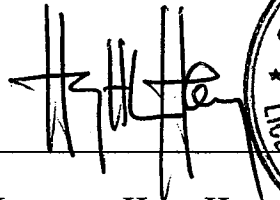
10. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

11. Engineer is an engineer duly licensed to practice engineering in the State of New York.

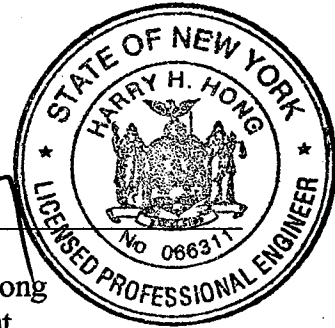
The statements contained in this letter are an expression of the undersigned's professional opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under its agreement with the Project Company in accordance with generally accepted standards of professional practice.

Very truly yours,

By



Name: Harry Hong
Title: President



CARUSO, CARUSO & BRANDA, P.C.
ATTORNEYS AT LAW

7302 13th Avenue

Post Office Box 280-086

Brooklyn, New York 11228-0003

TEL: 718-680-5778

FAX: 718-680-9671

MJC.CCB@VERIZON.NET

RAB.CCB@VERIZON.NET

BMD.CCB@VERIZON.NET

GMB.CCB@VERIZON.NET

MARK J. CARUSO

ROSE ANN C. BRANDA

BERNADETTE M. DAVIDSON

GRACE M. BORRINO

LEROY F. CARUSO

(1927-2003)

August 29, 2007

New York City Industrial
Development Agency
New York, New York

SI Bank & Trust (Sovereign Bank)
New York, New York

Re: New York City Industrial Development Agency
Industrial Incentive Program
(2007 Barone Steel Fabricators, Inc. Project)

Dear Sir/Madam:

This opinion is being furnished to you in connection with the entering into of a straight-lease transaction by the New York City Industrial Development Agency (the "Agency") for the benefit of Barone Steel Fabricators, Inc. (the "Sublessee"), a corporation organized and existing under the laws of the State of New York, and 128 44th Realty Holding LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of New York, pursuant to which the Agency will enter into a Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the Agency and the Lessee. Terms defined in the Lease Agreement have the same meanings herein except as the context otherwise requires.

We have acted as counsel for the Lessee, the Sublessee, Bar Fab Steel Corp. (the "Corporate Guarantor"), a New York corporation and Nicky Barone and Ralph Barone, as individual guarantors (collectively, the "Individual Guarantors"), and in that capacity, we have examined the following:

- (A) The articles of organization of the Lessee, certified by the Secretary of State of the State of New York;
- (B) The operating agreement of the Lessee, certified by a member of the Lessee;
- (C) The certificate of good standing of the Lessee, issued by the Secretary of State of the State of New York;
- (D) The certificate of incorporation of the Sublessee, certified by the Secretary of State of the State of New York;

(E) A copy of the bylaws of the Sublessee, certified by an officer of the Sublessee;

(F) The certificate of good standing of the Sublessee, issued by the Secretary of State of the State of New York;

(G) The certificate of incorporation of the Corporate Guarantor, certified by the Secretary of State of the State of New York;

(H) A copy of the bylaws of the Corporate Guarantor, certified by an officer of the Corporate Guarantor;

(I) The certificate of good standing of the Corporate Guarantor, issued by the Secretary of State of the State of New York;

(J) The certificates issued by the Department of Taxation and Finance of the State of New York relative to the tax status of the Sublessee, Lessee and Corporate Guarantor;

(K) The authorizations of the members of the Lessee authorizing, among other things, the Company Lease Agreement, dated as of August 1, 2007, between the Lessee and the Agency (the "Company Lease"), the Lease Agreement, the Sublease Agreement, dated as of August 1, 2007, between the Lessee and the Sublessee (the "Sublease Agreement"), the Guaranty Agreement, dated as of August 1, 2007, from the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors to the Agency (the "Guaranty Agreement"), a certain Letter of Authorization for Sales Tax Exemption, dated the date hereof, from the Agency to the Lessee, two certain Mortgage, Security Agreement and Assignment of Leases and Rents, each dated the date hereof (the "Mortgages"), from the Agency and the Lessee to SI Bank & Trust (Sovereign Bank) (the "Bank"), and the Letter of Representation, dated the date hereof, executed and delivered by the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors to the Agency and the Bank (the "Letter of Representation") (the documents referenced in this paragraph being referred to collectively as the "Lessee Documents");

(L) The authorizations of the board of directors of the Sublessee authorizing, among other things, the Sublease Agreement, the Guaranty Agreement and the Letter of Representation (the documents referenced in this paragraph being referred to collectively as the "Sublessee Documents");

(M) The authorizations of the board of directors of the Corporate Guarantor authorizing, among other things, the Guaranty Agreement and the Letter of Representation (the documents referenced in this paragraph being referred to collectively as the "Corporate Guarantor Documents");

(N) The Lessee Documents;

(O) The Sublessee Documents;

(P) The Corporate Guarantor Documents;

(Q) Title insurance policy numbered C29-0023567 issued on the date hereof by Lawyers Title Insurance Corporation (the "Title Company") to the Agency with respect to the Agency's leasehold interest in the Facility Realty located at 128 44th Street, Brooklyn, New York and the title insurance policies numbered K56-0080635 and K56-0080636 respectively, issued on the date hereof by the Title Company to the Bank with respect to the Mortgages (collectively, the "Title Insurance Policy"); and

(R) A survey of the Facility Realty as certified to the Agency, the Bank and the Title Company.

In addition, we have reviewed our office files pertaining to the Lessee, the Sublessee, the Corporate Guarantor and the Individual Guarantors and have discussed the Project and the transactions contemplated with the appropriate individuals and corporate officials.

Based upon the foregoing and upon such other information and documents and such investigation of fact and law as we believe necessary to enable us to render this opinion, we are of the opinion that:

(a) The Lessee is a limited liability company organized and validly existing and in good standing under the laws of the State of New York, and has the requisite power and authority to own its property and assets and to carry on its business as now being conducted by it.

(b) The Sublessee is a corporation organized and validly existing and in good standing under the laws of the State of New York, and has the corporate power and authority to own its property and assets and to carry on its business as now being conducted by it.

(c) The Corporate Guarantor is a corporation organized and validly existing and in good standing under the laws of the State of New York, and has the corporate power and authority to own its property and assets and to carry on its business as now being conducted by it.

(d) The Lessee has the requisite power and authority to execute and deliver the Lessee Documents; and each of the Lessee Documents has been duly authorized, executed and delivered by the Lessee; and each is a legal, valid and binding obligation of the Lessee enforceable against it in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Lessee Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(e) The Sublessee has the corporate power and authority to execute and deliver the Sublessee Documents and each of the Sublessee Documents has been duly authorized, executed and delivered by the Sublessee and each is a legal, valid and binding obligation of the Sublessee enforceable against it in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Sublessee Documents to which it is a party may be limited by bankruptcy, moratorium or insolvency or other laws

affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(f) The Corporate Guarantor has the corporate power and authority to execute and deliver the Corporate Guarantor Documents and each of the Corporate Guarantor Documents has been duly authorized, executed and delivered by the Corporate Guarantor and each is a legal, valid and binding obligation of the Corporate Guarantor enforceable against it in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Corporate Guarantor Documents to which it is a party may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(g) Each Individual Guarantor has executed and delivered the Guaranty Agreement and the Letter of Representation (the "Individual Guarantors Documents"), each of which is the legal, valid and binding, joint and several obligation of each Individual Guarantors enforceable against the Individual Guarantors in accordance with its terms. The foregoing opinion is qualified only to the extent that the enforceability of each of the Individual Guarantors Documents may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and each is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(h) The execution and delivery by the Lessee of the Lessee Documents do not, and the performance by the Lessee of its obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the articles of organization of the Lessee or its operating agreement, or of any indenture, mortgage, deed, trust agreement or other instrument to which the Lessee is a party or any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under its articles of organization or operating agreement or any such indenture, agreement or other such instrument.

(i) The execution and delivery by the Sublessee of the Sublessee Documents, and the performance by the Sublessee of its obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the certificate of incorporation of the Sublessee or its bylaws, or of any indenture, mortgage, deed, trust agreement or other instrument to which the Sublessee is a party or to which any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under its certificate of incorporation or bylaws or any such indenture, agreement or other such instrument.

(j) The execution and delivery by the Corporate Guarantor of the Corporate Guarantor Documents, and the performance by the Corporate Guarantor of its obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, the certificate of incorporation of the Corporate Guarantor or its bylaws, or of any indenture, mortgage, deed, trust agreement or other instrument to which the Corporate Guarantor is a party or to which any of its property is subject or by which it or any of its property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice

and/or lapse of time) a default under its certificate of incorporation or bylaws or any such indenture, agreement or other such instrument.

(k) The execution and delivery by the Individual Guarantors of the Individual Guarantors Documents do not, and the performance by the Individual Guarantors of their respective obligations thereunder will not, (i) constitute a violation of any provision of law, order, regulation or decree of any court or agency of government, or of any indenture, mortgage, deed, trust agreement or other instrument to which any of the Individual Guarantors is a party or any of their respective property is subject or by which the any of Individual Guarantors or any of their respective property is bound, or (ii) conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other such instrument.

(l) The exceptions set forth in the Title Insurance Policy issued to the Agency and to the Bank with respect to the Facility Realty do not impair good and marketable title to the property affected thereby or the use of the Facility for the purpose for which it is to be leased by the Agency to the Lessee as set forth in the Lease Agreement.

(m) The Lessee has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Lessee Documents.

(n) The Sublessee has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Sublessee Documents.

(o) The Corporate Guarantor has duly authorized the taking of any and all action necessary at the date hereof to carry out and give effect to the transactions contemplated to be performed on its part by the Corporate Guarantor Documents.

(p) To the best of my knowledge, after due inquiry, there is no action, suit, proceeding or investigation at law or in equity with respect to the Lessee by or before any court, public board or body, pending or threatened against or affecting the Lessee, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of the Lessee or the transactions contemplated by, or the validity or enforceability of, any of the Lessee Documents.

(q) To the best of my knowledge, after due inquiry, there is no action, suit, proceeding or investigation at law or in equity with respect to the Sublessee by or before any court, public board or body, pending or threatened against or affecting the Sublessee, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of the Sublessee or the transactions contemplated by, or the validity or enforceability of, any of the Sublessee Documents.

(r) To the best of knowledge, after due inquiry, there is no action, suit, proceeding or investigation at law or in equity with respect to any Individual Guarantor by or

before any court, public board or body, pending or threatened against or affecting any Individual Guarantor, nor do we know of any basis for any such pending or threatened action, suit, proceeding or investigation, wherein an unfavorable decision, ruling or finding on an issue raised by a party thereto would materially adversely affect the financial condition of any Individual Guarantor or the transactions contemplated by, or the validity or enforceability of, any of the Individual Guarantors Documents.

(s) There is no current Certificate of Occupancy for the Facility, nor will there be a Certificate of Occupancy required during the renovations of the Facility.

(t) The operation of the Facility by the Lessee and Sublessee in the manner presently contemplated and as described in the Lease Agreement will not conflict with any order, consent decree or other remediation plan issued or approved by a court, administrative or regulatory body under any federal, state or local environmental laws, rules or regulation.

(u) The Lessee and Sublessee have the environmental licenses and permits necessary to operate the Facility in the manner presently contemplated and as described in the Lease Agreement.

(v) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of the Lessee in connection with the execution and delivery of the Lessee Documents have been duly obtained, and the Lessee has complied with all applicable provisions of law, if any requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

(w) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of the Corporate Guarantor in connection with the execution and delivery of the Corporate Guarantor Documents have been duly obtained, and the Corporate Guarantor has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

(x) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of the Sublessee in connection with the execution and delivery of the Sublessee Documents have been duly obtained, and the Sublessee has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

(y) All consents, approvals and authorizations, if any, of any governmental authority, agency, quasi-governmental agency or private corporation required on the part of the Corporate Guarantor in connection with the execution and delivery of the Corporate Guarantor Documents have been duly obtained, and the Corporate Guarantor has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration

and/or qualification with any governmental authority in connection with such execution and delivery.

(z) All consents, approvals and authorizations, if any, of any governmental authority required on the part of the Individual Guarantors in connection with the execution and delivery of the Individual Guarantors Documents have been duly obtained, and each Individual Guarantors has complied with all applicable provisions of law, if any, requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery.

(aa) The operation of the Facility in the manner presently contemplated and as described in the Lease Agreement will not conflict with the Zoning Resolution of the City of New York.

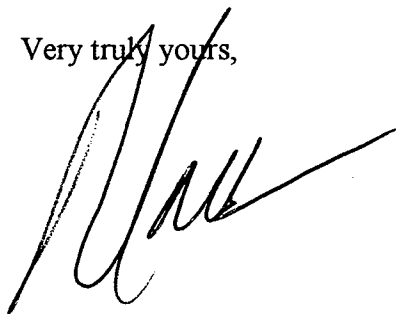
(bb) The Project does not constitute a Type I action within the meaning of Section 617.4 of the New York Code of Rules and Regulations under the State Environmental Conservation Act, being Article 8 of the New York State Environmental Conservation Law ("SEQRA").

(cc) Pursuant to the Company Lease, the Agency has been vested with a valid leasehold estate in the Facility.

(dd) The Sublessee has, pursuant to the Sublease Agreement, assumed in writing and agreed to keep and perform all of the terms of the Lease Agreement on the part of the Lessee to be kept and performed, and the Sublease Agreement does not legally impair in any respect the obligations of the Lessee under the Lease Agreement for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of the Lease Agreement.

All counsel to any of the parties to this transaction may rely on this letter as if it were addressed specifically to them.

Very truly yours,

A handwritten signature in black ink, appearing to be a stylized name, possibly "R. [unclear]".



FILE NO.: D07-0823
TITLE NO.: RT-35185
PREMISES: 128 44th Street
COUNTY: Kings
STATE: New York
Section: 3
Block: 735
Lots: 50

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

128 44TH REALTY HOLDING LLC

to

SI BANK & TRUST, a division of SOVEREIGN BANK

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS**

RETURN BY MAIL TO:

**Cullen and Dykman LLP
44 Wall Street, 17th Floor
New York, New York 10005
Att: Patricia E. Russo, Esq.**

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS**

By

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

128 44TH REALTY HOLDING LLC

In Favor of

SI BANK & TRUST, a division of SOVEREIGN BANK

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") made this 29th day of August, 2007, by the **New York City Industrial Development Agency**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038 (the "Agency") and **128 44TH REALTY HOLDING LLC**, a New York limited liability company having an address at 271 40th Street, Brooklyn, New York 11232 (the "Company") in favor of **SI BANK & TRUST, a division of SOVEREIGN BANK**, a federal savings bank, having an office at 1535 Richmond Avenue, Staten Island, New York 10314 (the "Mortgagee").

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish its stated purposes, the Agency has entered into negotiations with the Company and Barone Steel Fabricators, Inc., a New York corporation (the "**Sublessee**") for the providing of financial assistance (as defined in the Act) in connection with an industrial project for the Company and the Sublessee located at 128 44th Street, Brooklyn, New York 11232; and

WHEREAS, pursuant to a certain Company Lease Agreement, dated as of August 1, 2007 between the Company as landlord and the Agency as tenant (the "**IDA Company Lease**"), the Company has leased the Land and the Improvements (as each such capitalized term is hereinafter defined) to the Agency, which IDA Company Lease is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Agency has subleased the Land and the Improvements to the Company pursuant to a certain Lease Agreement, dated as of August 1, 2007 (the "**IDA Lease Agreement**") by and between the Agency and the Company, which IDA Lease Agreement is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Company has subleased the Land and the Improvements to the Sublessee pursuant to a certain Sublease Agreement, dated as of August 1, 2007, between the Company and the Sublessee (the "**IDA Sublease Agreement**"), which IDA Sublease Agreement is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Bank has agreed to lend to the Company the principal sum of TWO MILLION NINE HUNDRED FIFTEEN THOUSAND AND 00/100 (\$2,915,000.00) DOLLARS lawful money of the United States, to be paid, with interest thereon (as such sum may be reduced from time to time, together with the interest thereon, hereinafter sometimes collectively referred to and described as the "Debt"), according to a certain mortgage note or obligation of the Company bearing even date herewith (which, as now exists, and as the same may hereafter, from time to time be extended, amended, modified, restated or superseded, hereinafter collectively referred to as the "Note"); and

WHEREAS, the Debt will be secured by this Mortgage, which is intended to be recorded in the Kings County Register's Office, and which encumbers the Company's fee interest in the Mortgaged Property and the Agency's leasehold interest under the IDA Company Lease in the Land and the Improvements; and

WHEREAS, payment of the principal of, premium, if any, and interest on all sums due pursuant to the Note will be guaranteed jointly and severally by the Sublessee, Barfab Steel Corp., Nicky Barone and Ralph Barone (collectively, the "Guarantors") pursuant to a certain Joint and Several Guaranty dated as of the date hereof (the "Guaranty");

NOW THIS INDENTURE WITNESSETH that for better securing the payment of the Debt, and the performance by the Company and the Agency of their respective, covenants, conditions and obligations contained herein, in the Note and in any other documents and agreements given to secure payment of the Note according to the true

intent and meaning thereof, and also for and in consideration of one dollar to the Company and the Agency in hand paid by the Mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Company and the Agency have mortgaged, granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do mortgage, grant, bargain, sell, alien, release, convey and confirm their respective interests unto the Mortgagee, forever, and grant the Mortgagee a security interest in their respective interests in:

MORTGAGED PROPERTY

A. All the land located in the County of Kings and State of New York described in Schedule A annexed hereto and made a part hereof and known by the street address of 128 44th Street, Brooklyn, New York 11232 (the "Land") (including the fee interest of the Company therein and the Agency's leasehold interest therein pursuant to the IDA Company Lease).

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (the "Improvements").

TOGETHER with all and singular rights, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, including, but not limited to:

C. All fixtures, machinery, appliances, materials, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by the Agency and/or Company and located in or on, or attached to, or used, or intended to be used, in connection with the operation of, or with construction on, the Land or the Improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of the Company in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made by the Company or on its behalf with regard thereto (the "Personal Property").

D. All right, title and interest of the Agency and the Company, if any, in and to the land in the bed of the streets or highways abutting the Land to the center line thereof; all easements, rights of way, strips and gores of land, streets, ways, sidewalks, curbs, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, remainders, reversions and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Agency and/or the Company (the "Appurtenances").

E. All leases, lettings, occupancy agreements and licenses, excluding any of such as shall constitute the Excluded Property (as defined below) (collectively, but expressly omitting the Excluded Property, the "Leases") of the Land and/or the Improvements or any part thereof now or hereafter entered into and all right, title and interest of the Agency and the Company thereunder (other than the Excluded Property but including, without limitation, the cash and securities deposited thereunder), the right

to receive and collect the rents, issues and profits from the Leases (excluding the Excluded Property) (omitting the Excluded Property, the "Rents") and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Agency and the Company of, in and to, and all proceeds of any sales or other dispositions of, the property described in Paragraphs (A), (B), (C) and (D) above and this Paragraph (E), (but omitting, however, the Excluded Property).

F. All proceeds of and any unearned premiums on any insurance policies covering the Improvements or the Personal Property or the Rents including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof; excluding, however, any liability insurance proceeds in favor of the Agency.

G. All awards ("Awards"), heretofore made and hereafter to be made by any municipal, state or federal authorities to the Agency and/or the Company and all subsequent owners of the property described above in Paragraphs (A) through (E) including any awards for any changes of grade of streets affecting the property described above in Paragraphs (A) through (E) as the result of the exercise of the power of eminent domain (a "Taking").

H. All plans, drawings, specifications, site plans, subdivision maps, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the development of the Land and the construction of the Improvements (but omitting, however, the Excluded Property).;

I. All contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, and supply of any materials or the conduct of operations in and the management of the Mortgaged Property including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized, affecting the Land and/or the Improvements or the public improvements required to be installed under the terms of governmental approvals relating to the subdivision in which the Land is a part (but omitting, however, the Excluded Property);

J. Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Land and/or the Improvements and/or any other portion of the Mortgaged Property including, without limitation, certificates of occupancy, building permits, environmental certificates, certificates of operation, warranties and guarantees;

K. All the other estate, right, title, interest, use, possession, property, claim and demand whatsoever, contract rights, general intangibles, actions and rights in action, relating to the property described above in Paragraphs (A) through (J) and proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing; provided, however, the Mortgaged Property shall not mean and shall not include the "Excluded Property" which is defined to mean the IDA Lease Agreement and any amounts paid or payable thereunder, and the IDA Sublease

Agreement and any amounts paid or payable thereunder other than the right to receive or enforce payment of amounts under Section 5(d) of the IDA Sublease Agreement.

All the property, interests and rights referred to in Paragraphs (A) through (K) above and any additional property, interests or rights hereafter acquired by the Company and subject to the lien of this Mortgage or intended to be so are referred to in this Mortgage as the "Mortgaged Property", except that the Excluded Property shall not constitute part of the Mortgaged Property nor be subject to the lien, pledge, or security interest of this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property to the Mortgagee, its successors and assigns, forever.

The Agency and the Company hereby grant to the Mortgagee a security interest in all rights and property described above in Paragraphs (C) and Paragraphs (E) through Paragraph (K), to the extent of their respective interest therein (collectively, the "Collateral"). This Mortgage shall constitute a self-operative Security Agreement under Article 9 of the Uniform Commercial Code with respect to such rights and property, but the Agency (at the sole cost and expense of the Company) and the Company agree to execute and deliver on demand such other instruments as the Mortgagee may request in order to create or perfect its security interest or to impose the lien hereof more specifically upon any of such rights and property. The Mortgagee shall have all the rights and remedies under this Mortgage, or under any applicable law or agreements with the Agency and/or the Company, of a Secured Party under the Uniform Commercial Code in addition to those specified herein.

ARTICLE I

TERMS, COVENANTS, CONDITIONS, REPRESENTATIONS AND WARRANTIES

The Agency and the Company covenant, represent and warrant to the Mortgagee as follows, provided that each of the Agency and the Company covenant, agree and represent only with respect to the covenants, representations and warranties of each and not of the other:

Section 1.1. Payment of Debt. The Company will pay the Debt as provided in the Note and the Company will pay all amounts due and owing by the Company under the IDA Lease Agreement in accordance with its terms.

Section 1.2. Maintenance of the Mortgaged Property and Compliance with Laws. The Company, shall (at its expense in so far as is applicable by the context):

(a) maintain the Improvements in good and substantial order and repair and in such fashion that the value and utility of the Mortgaged Property will not be diminished and will make or cause to be made all necessary and appropriate repairs, replacements, and renewals thereof, whether interior or exterior, structural or non-

structural; all repairs, replacements and renewals to be at least equal, in quality and class, to that of the original Improvements;

(b) not use or cause the whole or any part of the Mortgaged Property to be used in such a manner as to cause the same to be subject to forfeiture under applicable laws. In the event that any person or entity, in possession of the whole or any part of the Mortgaged Property, or otherwise, may, by acts or omissions, cause the Mortgaged Property to be subject to forfeiture, the Company, within five (5) days after receiving notice of the occurrence of any such act or omission, shall notify the Mortgagee of the occurrence of such act or omission and shall commence such legal proceedings against the party committing or permitting the acts or omissions as shall be necessary to prevent such forfeiture;

(c) comply with, or cause to be complied with, all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorization, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers which may, as at the date of this Mortgage or thereafter, affect the Mortgaged Property or any part thereof or its use or condition, or which may affect any adjoining sidewalks, curbs, vaults and vault space if any, or streets or ways in so far as the Company is required to comply therewith;

(d) comply with, or cause to be complied with, all requirements of the issuer of any policy(s) of insurance covering or affecting the whole or any part of the Mortgaged Property, and all orders, rules, regulations and other requirements of the New York Board of Fire Underwriters (or that of any other body exercising similar functions) applicable to the Mortgaged Property or any part thereof; and

(e) not do or permit any act or thing which is contrary to the requirements or prohibitions of any document of record affecting the Mortgaged Property nor commit or permit any waste of or any nuisance in, at or on the Mortgaged Property or any part thereof.

Section 1.3. Alterations. The Company covenants that none of the Improvements or any part or portion thereof, and none of the Personal Property or any part or portion thereof, shall be removed, altered or demolished without the prior written consent of the Mortgagee in each instance, provided, however, that the Company shall have the right, without the consent of the Mortgagee, to remove and dispose of, free from the lien of this Mortgage, such Personal Property as from time to time may become worn out or obsolete, provided that, simultaneously with or prior to such removal, any such Personal Property shall be replaced with Personal Property of like kind and value at least equal to that of the replaced Personal Property and free from any title retention, security interest or other encumbrance.

Section 1.4. Taxes and Other Charges; Mortgage Taxes. (a) The Company will pay when due (i) all liens of any kind, taxes or any kind and nature (including but not limited to real and personal property taxes and income, franchise, withholding profits and gross receipts taxes), assessments, water rates, sewer rents, rents and rates, and other

governmental or municipal charges, fines or impositions relating to the Mortgaged Property or any part thereof, and (ii) taxes upon the rents, revenues, income or profits of the Mortgaged Property, or taxes arising in respect of the occupancy, use or possession of the whole or any part thereof, which, if not paid, shall result in the imposition of a lien upon the Mortgaged Property, and the Company will promptly deliver official receipts therefor to the Mortgagee.

(b) After prior notice to the Mortgagee, in the case of any material item, the Company, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no default shall have occurred and shall be continuing under the Note or this Mortgage, (ii) the Company is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (iii) such proceeding shall suspend the collection of the contested Taxes from the Company and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Company or the Mortgaged Property is subject and shall not constitute a default thereunder, (v) neither the Mortgaged Property nor any part thereof nor any interest therein will in the opinion of the Mortgagee be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) the Company shall have set aside in an interest-bearing account with the Mortgagee, and otherwise in a manner satisfactory to the Mortgagee, adequate cash reserves for the payment of the contested Taxes, together with all interest and penalties thereon, or in the alternative the Company shall have furnished such security as may be required in the proceeding, or as may otherwise be requested or required by the Mortgagee to insure the payment of the contested Taxes, together with all interest and penalties thereon, and, provided further, that if at any time the Mortgagee determines, in its sole and absolute discretion, that payment of any tax, assessment or other charge shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment of any such sums, then the Company shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed.

(c) If a default shall occur under the Note or this Mortgage either prior to, or after, initiating said proceeding, the Mortgagee shall have the right to either initiate or continue said proceeding, as the case may be, either in its own name or as agent of the Company. The Company shall cooperate with the Mortgagee and make available to the Mortgagee upon demand any and all information, and execute any documents or pleadings, which the Mortgagee may reasonably require. The Mortgagee shall then conduct said proceeding in a manner it deems appropriate, and at its own expense, subject to any right of reimbursement from the Company in accordance with the provisions of this Mortgage.

Section 1.5. Tax Deposits. Notwithstanding anything to the contrary contained in this Mortgage, the Mortgagee may require that the Company deposit with the Mortgagee, monthly, one-twelfth (1/12th) of the annual charges for ground or other rent, if any, real estate taxes, assessments, water, sewer and other charges which might become a lien upon the Mortgaged Property (or any part thereof) and, if requested by the Mortgagee, insurance premiums, and the Company shall, accordingly, make such deposits. No such

payment by the Company to the Mortgagee relative to payments in lieu of real estate taxes shall modify or limit, or be deemed any payment toward, the obligations of the Company under Section 4.3 of the IDA Lease Agreement. In addition, the Company may simultaneously therewith deposit with the Mortgagee a sum of money which, together with the monthly installments aforementioned, will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date on which such payments are due. Should said charges not be ascertainable at the time any deposit is required to be made with the Mortgagee, the deposit shall be made on the basis of an estimate made by the Mortgagee in its sole discretion, and when the charges are fixed for the then current year, the Company shall deposit any deficiency with the Mortgagee. All funds so deposited with the Mortgagee shall be held by it, but not in escrow and, except to the extent required by applicable law, without interest, and, provided that no "Event of Default" (as defined below in Section 2.1.1), shall have occurred and be continuing, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Should an Event of Default occur and be continuing, the funds deposited with the Mortgagee, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Debt or any other charges affecting the security of the Mortgagee, as the Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided, nor shall any application be deemed to affect any right or remedy of the Mortgagee hereunder or under any statute or rule of law.

Section 1.6. Warranty of Title. The Company warrants that (i) it has a good and marketable title to an indefeasible fee estate in the Land and is lawfully possessed of the Land, and the Agency has a valid and subsisting leasehold estate in the Land pursuant to the IDA Company Lease, in each case subject only to such encumbrances as are listed as exceptions to title in the title policy insuring the lien of this Mortgage (the "Permitted Encumbrances"); (ii) the Land is free and clear of any lien, charge or encumbrance thereon or affecting the title thereto prior to this Mortgage (other than the Permitted Encumbrances); (iii) the Company is well and truly seized of the Improvements, Equipment and other Mortgaged Property, and neither the Agency nor the Company have heretofore assigned their respective interests in the same; (iv) the Company will maintain and preserve the lien of this Mortgage until the Note has been paid in full; (v) the Company and the Agency have good right and lawful authority to mortgage and pledge the Mortgaged Property, as provided in this Mortgage; and (vi) the Company, at its sole cost and expense, will forever warrant and defend the Land against any and all claims and demands whatever, except the exceptions to the title set forth in clause (i) above as are specifically set forth in this Mortgage.

Section 1.7. Right of Mortgagee to Defend and Uphold the Lien; Costs. (a) The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Company, which the Mortgagee, in its sole discretion, believes should be brought to protect its interest in or the title to the Mortgaged Property. The Mortgagee may take such action by attorneys selected by the Mortgagee.

(b) If any action or proceeding be commenced, whether adversary or not (including an action to foreclose this Mortgage or to collect the Debt), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend, uphold or enforce the lien of this Mortgage, the Mortgagee may prosecute, defend or participate in such action or proceeding by attorneys selected by the Mortgagee.

(c) All sums paid by the Mortgagee for the expense of any such action or proceeding described in this Section including any appellate proceeding in connection herewith (including without limitation, reasonable attorneys' fees and disbursements at trial and appellate level) shall be paid by the Company to the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the default rate provided in the Note (the "Default Rate"). Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(d) In the event the maturity of the principal amount of the Debt shall be accelerated by reason of a default under the Note, this Mortgage, or any other instrument given to secure the payments provided to be made pursuant to the Note, in addition to the costs and fees described above in Subsection (c), the Company shall pay to the Mortgagee, upon demand, together with the interest thereon at the Default Rate, the fees and costs incurred by the Mortgagee, following such acceleration, in obtaining an appraisal of the fair market value of the Mortgaged Property prepared by an appraiser, duly qualified under applicable law and governmental regulations to issue appraisals of real property to the Company in connection with the approval of loans so secured, and the fees and costs incurred by the Company in obtaining an Environmental Survey of the Mortgaged Property, as defined below in Subsection 1.24 (f). Upon reasonable notice to the Company, the Mortgagee, its officers, employees, agents and contractors, may enter the Mortgaged Property to conduct the Environmental Survey. Any such fees and costs paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

Section 1.8. Insurance Coverage. (a) The Company, until the Debt secured by this Mortgage shall be fully paid and satisfied, shall keep, as applicable, the Company, the Improvements and the Personal Property insured, by a company or companies and in form, amounts and with coverage and deductibles satisfactory to Mortgagee against:

(i) loss or damage by perils customarily included under standard "all risk" policies, and all other contingencies as may be required by the Mortgagee, which shall evidence, by endorsement, (i.e., a so-called "agreed amount" replacement cost endorsement insuring one hundred percent (100%) of the replacement cost of the Improvements) the agreement of the insurer to pay, upon the occurrence of an insured loss, a sum equal to the cost to repair or replace the lost or damaged

Improvements and the Personal Property which shall be damaged or destroyed by reason of an insured loss, with property of a like kind and quality, without deduction for depreciation and normal wear and tear;

(ii) the coverages provided by so called Commercial General Liability insurance, applicable to the Mortgaged Property, in such amounts as are usually carried by persons or entities owning properties similar to the Mortgaged Property wherein is being conducted the business then being conducted therein in the same general locality as that of the Mortgaged Property, but in any event for amounts not less than \$1,000,000.00 for each occurrence, for death, personal injury and property damage, and \$2,000,000.00, in the aggregate for covered occurrences, which amounts shall be increased, from time to time, to reflect what a reasonably prudent owner or lessee of buildings or improvements similar in type and locality to that of the Mortgaged Property would carry;

(iii) the coverages provided by all-risk builders' risk insurance with respect to the Mortgaged Property during any period in which there is any construction occurring with respect to the Improvements, in an amount no less than the full replacement cost of the Improvements which are the subject of the construction;

(iv) if the Mortgaged Property is now located in an area having special flood hazards or if such area hereafter shall be designated by the United States Government, or any agency thereof, as having special flood hazards, the coverages provided by a policy insuring against floods in an amount equal to the lesser of (A) the principal amount secured by this Mortgage or (B) the maximum amount available pursuant to federal law;

(v) insurance against such other hazards (including war damage insurance, if and when the same is available from the United States Government or any agency or subdivision thereof) as may be reasonably required by the Mortgagee from time to time and as are customarily insured against with respect to like properties; and

(vi) in addition, shall keep and maintain worker's compensation insurance to the full extent required by applicable law for all employees of the Company engaged in any work on or about the Mortgaged Property.

(b) All companies which shall provide the insurance required by this Mortgage shall have a rating of A-8 or better, in the edition of Bests Key Rating Guide current for the time when the insurance is given, and shall be qualified to do business in the State where the Mortgaged Property is located.

(c) At the time of the execution of this Mortgage and at least thirty (30) days prior to the expiration of each policy required to be provided by the Company pursuant to the provisions of this Section, the Company shall deliver to the Mortgagee the policy or policies or renewal policy or policies, as the case may be, with appropriate evidence of the payment of the premium therefor.

(d) The insurance policies required to be procured pursuant to this Mortgage shall:

(i) as to the insurance coverage required under subsection (a) (i) above, contain a standard New York non-contributory form of mortgagee endorsement satisfactory to the Mortgagee, naming the Mortgagee, its successors and assigns as their interests may appear, as "mortgagee insured", and as "loss payee", and providing that no act, omission or negligence of the Company, or its agents, servants or employees, or of any tenant under any lease for the whole or any part of the Mortgaged Property, which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance insofar as the Mortgagee is concerned;

(ii) as to all other coverage name the Agency and the Company and the Mortgagee, as named insureds, as their respective interests may appear; and

(iii) provide, to the extent obtainable, that such policies may not be canceled or amended or in any way limited in coverage or reduced in amount without at least thirty (30) days' prior written notice to the Mortgagee, that no claims thereunder shall be paid without at least ten (10) days prior written notice to the Mortgagee and that the insurance proceeds or awards may be adjusted only after obtaining the prior written consent of the Mortgagee.

(e) The Company, at its expense, will furnish to the Mortgagee, within ninety (90) days after demand (but not more frequently than once in each consecutive period of sixty (60) calendar months which period commences with the appraisal made in connection with this Mortgage) proof of the then full insurable value of the Improvements and the Personal Property, such proof to be by appraisals satisfactory in form and substance to the Mortgagee and prepared by an appraiser designated and paid for by the Company and approved by the Mortgagee. No failure or omission on the part of the Mortgagee to request any such appraisals or proof shall relieve the Company of any of its obligations under this Section.

(f) In the event that any one or more of the properties comprising any of the Improvements or the Personal Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Company shall promptly restore, replace, rebuild or alter the damaged or destroyed Improvements and Personal Property, in either case as nearly as possible to the condition the Improvements and Personal Property were in prior to such damage or destruction, without regard to the availability or adequacy of insurance proceeds but only if Mortgagee shall make the insurance proceeds obtained by it available to Company to pay for such work. If the damage be of such nature as to require the Company to construct a replacement for, or to alter the damaged or destroyed items in any material or substantial way, the Company shall, before commencing any such work, submit to the Mortgagee for the Mortgagee's approval, which shall not be unreasonably withheld or delayed, copies of the plans and specifications therefor to be prepared by an architect or engineer selected by the Company, subject to the approval of the Mortgagee, who shall then be licensed by the state in which the Mortgaged Property

is located, and who shall have been placed in charge of the restoration of the Improvements.

(g) Until the full payment of the Debt, the Mortgagee shall have and hold the insurance policies described in this Section as collateral and further security for the payment of the Debt. In default of the Company's compliance with this Section, (i) the Company hereby agrees to indemnify and hold the Mortgagee harmless against all damage, loss or liability resulting from all risks that would have been covered by such insurance to the extent of the benefit which would have been received by the Mortgagee had the insurance coverage required to be obtained under this Subsection been obtained and maintained by the Company as required hereunder and (ii) the Mortgagee or its successors or assigns may, but shall have no obligation to, place such insurance as described above, from time to time, in an amount in the aggregate not exceeding the amount of insurance required to be obtained under this Section, for the purpose aforesaid, and pay the premium or premiums therefor. In the event of such payment, the Company will pay to the Mortgagee, its successors or assigns such premium or premiums so paid by the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, title or interest in, to or on or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by this Mortgage and evidenced by the Note. In addition, in the event of a default of such payment by the Company or of the delivery of policies as provided above in this Section, the Debt shall, at the option of the Mortgagee, its successors or assigns, immediately become due and payable.

(h) The insurance required pursuant to this Section may be effected by a policy of blanket insurance which may cover property in addition to the Mortgaged Property, provided that the coverage shall be the same as if the Mortgaged Property were the sole property insured and the Company shall deliver to the Mortgagee a duplicate original copy or copies thereof or original insurance certificates therefor.

Section 1.9. Insurance Proceeds. (a) The Company shall give the Mortgagee prompt notice of any damage or destruction by fire or casualty occurring at the Mortgaged Property and the Company shall make such temporary repairs as are necessary for the protection of the Improvements. The proceeds of any insurance paid on account of any damage or destruction to the Mortgaged Property shall be paid over to the Mortgagee to be applied as hereinafter provided. In the event any such insurance proceeds shall be paid to the Company or by two-party check delivered to the Company, the Company shall forthwith pay such insurance proceeds to the Mortgagee, or endorse such two-party check and deliver it to Mortgagee (as the case may be), and the Company shall be personally liable for any such insurance proceeds not paid to the Mortgagee, notwithstanding any exculpation provision contained in this Mortgage or in any other Loan Document (as defined in Section 2.1.1(h) of this Mortgage).

(b) The Mortgagee shall have the option, in its sole discretion, to apply any insurance proceeds it may receive by reason of damage or destruction to the

Mortgaged Property toward payment of the Debt, or the same may be paid over either wholly or in part to the Company or to the heirs, successors or assigns of the Company for the repair of the Improvements and Personal Property or for the erection of new Improvements and the acquisition and installation of new Personal Property in their place, or for any other purpose or object satisfactory to the Mortgagee, and, if the Mortgagee shall receive and retain insurance money for such damage to the Mortgaged Property, the lien of this Mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money received and retained by the Mortgagee and applied toward payment of the obligations secured hereby.

Section 1.10. Condemnation. (a) The Company shall give the Mortgagee prompt notice of any condemnation or eminent domain proceedings affecting the Mortgaged Property.

(b) The Company will not enter into any agreement for a Taking of the Mortgaged Property, or any part thereof, without the prior written consent of the Mortgagee.

(c) In the event the whole or any part of the Mortgaged Property shall be the subject of a Taking, or shall be voluntarily conveyed in lieu thereof prior to the payment in full of the Debt, the Company shall pay to the Mortgagee, during the period from the date of a Taking (or conveyance in lieu thereof) to the payment in full of the Debt, the difference, if any, between the interest payable thereon at the rate stipulated in the Note in respect of the Debt and the interest actually paid to the Company by the entity exercising the right of eminent domain or to whom the Mortgaged Property was conveyed in lieu of the exercise of such power.

(d) All Awards are hereby assigned to the Mortgagee. The Mortgagee and its legal representatives, successors and assigns (at its or their option) are hereby irrevocably authorized and empowered to collect and receive the Awards from the authorities making the same, to give proper receipts and acquittances therefor in any of their names or in the name of the Company, and to apply the same toward the payment of the Debt, the Note or this Mortgage, in such priority and proportions as the Mortgagee in its discretion shall deem proper, although the Debt secured by this Mortgage then may not be due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of any Awards, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive any Awards, or a portion thereof sufficient to pay the Debt, whichever is less.

(e) Notwithstanding any Taking, the Company shall continue to pay the Debt at the time and in the manner provided for in the Note and in this Mortgage and the Debt shall not be reduced until any Awards shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Company shall file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Company, further, hereby irrevocably appoints the Mortgagee and its officers and employees the attorney-

in-fact of the Company, coupled with an interest, to file, prosecute, settle, and compromise its claims for any Awards, to receive any Awards and to endorse any instruments with respect thereto. The Company further agrees that although it is hereby expressly agreed that the same shall not be necessary in any event, the Company shall, upon demand, of the Mortgagee, make, execute and deliver to it any and all assignments and other instruments sufficient for the purpose of assigning any Awards to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

Section 1.11. Estoppel Certificates.

(a) The Company, within twenty (20) days of the receipt of a request from the Mortgagee, but not more frequently than twice in any twelve month period, will furnish a written statement, duly acknowledged, of the amount due on the Debt and whether any offsets and defenses exist against the Debt.

(b) The Mortgagee, within twenty (20) days of the receipt of a request from the Company, but not more frequently than twice in any twelve month period, will furnish to the Company a statement setting forth the principal balance then outstanding on the Note, accrued interest thereon to the date of the statement and the date to which such interest has been paid.

Section 1.12. Financial Statements. (a) The Company agrees to furnish the Mortgagee, the financial statements required pursuant to the provisions of the Note.

(b) Promptly after a request therefor, the Company shall furnish to the Mortgagee such other financial data or information as the Mortgagee may reasonably request from time to time.

(c) At the same time as it delivers the financial statements required under the provisions of Subsections (a) and (b) above, the Company shall furnish to the Mortgagee a certificate signed by the Company, to the effect that no default under the Note, an Event of Default under this Mortgage nor a default in or under any other agreement to which the Company is a party or by which it is bound, or by which any of its properties or assets may be affected, and no event which, with the giving of notice or the lapse of time, or both, would severally constitute such an event of default, has occurred, and specifying in reasonable detail, the exceptions, if any, to such statement.

(d) The Mortgagee shall have the right to inspect the books and records of the Company at reasonable times.

Section 1.13. Restrictions on Sales and Transfers. The Company shall not, without the consent in writing of the Mortgagee, voluntarily change the use of the Mortgaged Property or sell, transfer, or convey its interest in the Mortgaged Property or any part thereof in or by any one or series of transactions or permit the Mortgaged Property or any part thereof or any interest therein to be sold, transferred, or conveyed, except that the Agency may transfer its interest in accordance with the IDA Lease Agreement. For the purposes of this Section a "sale" shall include: (I) if the Company is

a corporation, a majority of its voting shares of stock shall be sold, transferred or pledged, or the majority interest therein shall be transferred by the issuance of new shares or otherwise, in any one or series of transactions; or, (II) if the Company is a partnership, limited liability company, joint venture or similar entity, the majority of the interest or interests in the Company be sold, transferred or pledged or the majority of the interests therein be transferred or diluted by the admission of new partners, members or otherwise, in any one or series of transactions. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to further or successive transactions.

Section 1.14. Restrictions on Leasing and Further Encumbrances. The Company shall not, without first obtaining the prior consent of the Mortgagee in each such instance:

(a) mortgage, convey or grant a lien subordinate to this Mortgage on the Mortgaged Property, or on any or all of the Land, Improvements, Personal Property or Appurtenances of which it is comprised except to the Mortgagee secured by a subordinate mortgage lien on the Mortgaged Property in an amount not to exceed \$1,945,000.00 (the "Subordinate Mortgage") provided the Subordinate Mortgage shall be and remain subject and subordinate in all respects to the lien of this Mortgage and to any modifications, extensions or renewals thereof. Any default by the Company under any of the terms of the Subordinate Mortgage shall be deemed a default under the terms of this Mortgage;

(b) collect or pay any Rents for a period of more than one month in advance other than the security deposited in connection with a Lease;

(c) further pledge, transfer, mortgage or otherwise encumber or assign the Leases and Rents except to the Mortgagee;

(d) waive, excuse, condone, discount, set-off, compromise, cancel, terminate or in any manner release or discharge, any tenant under any Lease, of and from any obligations, covenants and agreements by said tenant to be kept, observed and performed, including the obligation to pay rent thereunder, in the manner and at the place and time specified therein (reference is made to Section 291-f of the Real Property Law of the State of New York to establish for the Mortgagee the rights and benefits provided therein);

(e) cancel, terminate or consent to any surrender of any Lease, except as may be provided in any such Lease, or commence an action of ejectment or any summary proceedings for dispossession of the tenant under any Lease or execute any right to recapture provided in any Lease;

(f) execute or permit to exist any Lease (other than the IDA Company Lease, the IDA Lease Agreement and the IDA Sublease Agreement) except for occupancy by the lessee under and pursuant to a written lease in form and substance satisfactory to the Mortgagee and with a lessee satisfactory to Mortgagee;

(g) modify, amend, extend or renew any Lease, or permit the lessee under any Lease to assign the tenancy thereunder unless such lessee has such right of assignment under its lease without the necessity of obtaining Company's consent thereto (reference is made to Section 291-f of the Real Property Law of the State of New York to establish for the Mortgagee the rights and benefits provided therein);

(h) relocate any tenant under any Lease, nor consent to any modification of the express purposes for which such space has been leased, nor consent to any subletting of all or any portion of the Mortgaged Property, or to an assignment of any Lease or a further subletting of any sublease, except as may be provided in any Lease;

(i) consent or agree to accept a subordination of any Lease to any mortgage or other encumbrance (other than this Mortgage) now or hereafter affecting the Mortgaged Property;

(j) create or permit to exist any easement or restrictive covenant affecting the Mortgaged Property.

Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

Section 1.15. Liens. The Company shall discharge of record, by the filing of a bond pursuant to court order or otherwise, any mechanic's or materialmen's lien or a judgment lien filed against the Mortgaged Property, within thirty (30) days after the filing thereof.

Section 1.16. No Recorded Restrictions Based on Race, Etc. The Company shall not execute or file or record any instrument which imposes a restriction upon the sale or occupancy of the Mortgaged Property on the basis of race, sex, religion, national origin, color or creed. Upon any violation of this undertaking, the Mortgagee may, at its option, declare the unpaid balance of the Debt to be immediately due and payable.

Section 1.17. Maintenance of Existence. The Company will, if other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation, partnership, limited liability company, trust or other entity under the laws of the jurisdiction of its formation or incorporation and will comply with all regulations, rules, ordinances, laws, statutes, orders and decrees of any governmental authority applicable to it or to the Mortgaged Property, or any part thereof. The Company represents that, as may be the case, all of its general partners, members, and, to the extent required by law and its organizational documents, its members, if any, have authorized the execution of this Mortgage and this Mortgage is made in the regular and ordinary course of business.

Section 1.18. Usury. Nothing herein or in the Note, and none of the terms, covenants, conditions or obligations hereof or thereof shall impose or shall be deemed to impose upon the Company an obligation to make any payment, pay any interest or late charges in excess of, or do any act or take any action, or forbear from doing any act or

taking any action, in violation of any statute, rule, ordinance or regulation in effect and effective as of the date of such payment, act, action or forbearance. In no event shall the Company be required to make any such illegal or impermissible payment or to take or do any such illegal or impermissible act or forbear from so doing or so taking nor shall any such failure so to pay or act or such forbearance be deemed a default hereunder. If the provisions of this Mortgage would at any time otherwise require payment by the Company to the Mortgagee of an amount of interest in excess of the maximum amount then permitted by law, the interest payments to the Mortgagee shall be reduced to the extent necessary so that the Mortgagee shall not receive interest in excess of such maximum amount. To the extent that, pursuant to the foregoing sentence, the Mortgagee shall receive interest payments hereunder in an amount less than the amount otherwise provided, such deficit (the "Interest Deficit") will accumulate and will be carried forward (without interest) until the Debt is paid in full. Interest otherwise payable to the Mortgagee hereunder for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing the Mortgagee to receive interest in excess of the maximum amount then permitted by law. The terms, covenants, conditions and obligations hereof or of the Note requiring any such illegal or impermissible payment, act, action or forbearance on the part of the Company to be made or taken are deemed amended, modified or altered in such a manner as to bring all and each of them into conformity with the applicable statutes, rules, ordinances or regulations in respect of the Company and the Company hereby covenants and agrees to abide by, conform to and comply with any and all such terms, covenants, conditions and obligations as so amended, modified or altered.

Section 1.19. Payment of Charges; Advances and Disbursements; Costs of Administration and Enforcement.

(a) Upon default of the Agency and/or the Company in the performance of any term, covenant, condition or obligation by (i) the Agency and/or the Company to be performed under this Mortgage, (ii) the Company to be performed under the Note, or (iii) the Company to pay, when due, any of the sums which the Company is required to pay as provided above in Section 1.4, the Mortgagee may, but shall not be obligated to, cure such default, or make such payment in the name and on behalf of the Company. All sums advanced and all expenses incurred at any time by the Mortgagee pursuant to this Section 1.19 or as otherwise provided under the terms, covenants, conditions or obligations of this Mortgage or under applicable law shall be reimbursed by the Company to the Mortgagee, upon demand, and shall bear interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(b) The Company shall bear and pay all direct and incidental expenses (including, without limitation, attorneys' fees and disbursements for legal services of every kind at trial and appellate level) relating to the administration of this Mortgage and the other Loan Documents (as defined in Section 2.1.1(h) of this Mortgage) including,

without limitation, the performance of new appraisals of the Mortgaged Property necessitated by (i) the Mortgagee's credit policy guidelines applicable to mortgage loans made by Mortgagee or (ii) any regulatory requirements imposed upon Mortgagee by any governmental or quasi-governmental entity having jurisdiction over Mortgagee. All such expenses paid by the Mortgagee shall be reimbursed by the Company to the Mortgagee, upon demand, and shall bear interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

Section 1.20. Assignment of Leases and Agreements.

(a) Pursuant to Section 291-f of the Real Property Law of the State of New York, neither the Company nor any tenant under any Lease shall have the right or power, as against the Mortgagee without its consent, to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases now or hereafter in effect (other than the Excluded Property, except for the right to payments to be made to the Mortgagee pursuant to Section 5(d) of the IDA Sublease Agreement) in respect of all or any part of the Mortgaged Property or the Improvements or to accept or make, as the case may be, prepayments of installments of rent to become due thereunder. The Rents of the Mortgaged Property are hereby transferred and assigned to the Mortgagee, and the Mortgagee shall have the right to enter upon the Mortgaged Property for the purpose of collecting the same and to let and operate the Mortgaged Property or any part thereof and to apply the Rents, either in whole or in part, as the Mortgagee elects, to the payment of all charges and expenses of the Mortgaged Property or in reduction of any part of the Debt or other sums due or to become due under the Note or this Mortgage. This assignment and grant shall continue in effect until the Debt and all other obligations secured by this Mortgage are paid in full. The Mortgagee hereby waives the right to enter upon the Mortgaged Property for the purpose of collecting the Rents and the Company shall have a license to collect and receive the Rents until an Event of Default hereunder, but such license of the Company may be revoked by the Mortgagee upon any such Event of Default. From and after the occurrence of an Event of Default hereunder all Rents collected or received by the Company shall be accepted and held for Mortgagee in trust and shall not be commingled with the funds and property of Company, but shall be promptly paid over to Mortgagee. The Mortgagee may apply all Rents or any part thereof so received hereunder, after the payment of all of its expenses including costs and attorneys' fees, to the Debt in such manner as it elects or at its option the entire amount or any part thereof so received may be released to the Company.

(b) All future Leases entered into after the execution of this Mortgage for the whole or any part of the Mortgaged Property shall contain the following provision (or a provision substantially the same):

"Tenant/Lessee hereby agrees not to look to the mortgagee of (i) the fee interest in the premises demised by this Lease or (ii) the lease to which this Lease is

subordinate, in such mortgagee's capacity as mortgagee, mortgagee in possession, successor in title to such interest, or otherwise, for accountability for any security deposit required by the landlord hereunder, unless said sums have actually been received by said mortgagee as security for the tenant's performance of this Lease."

Section 1.21. Inconsistency With Related Laws. Nothing contained in this Mortgage shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 or 271, 272 and 291 (f), of the Real Property Law of the State of New York, as the same may be modified or renumbered, from time to time, or any other similar, applicable law of the state in which the Mortgaged Property is located, but all terms, covenants, conditions or obligations herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages, except that the terms, covenants, conditions and obligations of this Mortgage shall supersede the provisions of subdivision 4 of said Section 254.

Section 1.22. Right of Inspection. The Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

Section 1.23. Late Charges. In the event that any payment cannot be debited on its debit date, a "late charge" of five cents (\$.05) for each dollar so overdue may be charged to the Company by the Mortgagee for the purpose of defraying the expenses incident to handling such delinquent payment.

Section 1.24. Environmental Matters. (a) For purposes of this Mortgage, the following terms shall have the following meanings:

"Environmental Complaint" - shall mean any judgment, lien, order, complaint, notice, citation, action, proceeding or investigation pending before any Governmental Authority, including, without limitation, any environmental regulatory body, with respect to or threatened against or affecting the Company or relating to its business, assets, property or facilities or the Mortgaged Property, in connection with any Hazardous Material or any Hazardous Discharge or any Environmental Law.

"Environmental Laws" - shall mean any applicable federal, state or local laws, rules, regulations, resolutions, ordinances, directives or orders (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of such laws, rules, regulations, resolutions, ordinances, directives or orders or any other applicable determination regarding land, water, air, health, safety or environment including, for example but not limited to, the Federal Statutes and the State Statute.

"Governmental Authority" - shall mean any federal, state, or local government, governing body, agency, court, tribunal, authority, subdivision, bureau or other recognized body having jurisdiction to enact, promulgate, interpret, enforce, review or repeal any Environmental Law.

"Hazardous Discharge" - shall mean any release of a Hazardous Material caused by the seeping, spilling, leaking, pumping, pouring, emitting, using, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Material into the environment, and any liability for the costs of any cleanup or other remedial action.

"Hazardous Materials" - shall mean, without limitation, flammables, explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls or related or similar materials, petroleum products, explosives, radioactive materials, or any other hazardous or toxic or harmful materials, wastes and substances or any other chemical, material, substance or element which is hereinafter defined, determined, identified, prohibited, limited or regulated by the Environmental Laws, or any other chemical, material, substance or element which is known to be harmful to the health or safety of occupants of property or which is hereinafter defined as a hazardous or toxic substance by any Federal, State, or local law, ordinance, rule or regulation, including, but not limited to the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and/or the regulations promulgated in relation thereto, all as the same may be amended from time to time (collectively, the "Federal Statutes"); the New York State Environmental Conservation Law Article 27, Title 13 (the "State Statute"), and the regulations promulgated in relation thereto, all as the same may be amended from time to time.

(b) The Company covenants, represents and warrants that (except as set forth in the site assessment of the Mortgaged Property prepared for the benefit of the Mortgagee):

(i) to the best of the Company's knowledge, after due inquiry and investigation, the Mortgaged Property has never been used by previous owners, operators or occupants or the Company to generate, manufacture, refine, transport, treat, store, handle or dispose, transfer, produce, process or in any manner deal with any Hazardous Material,

(ii) the Company has not received a summons, citation, directive, letter or other communication, written or oral, from any Government Authority concerning any intentional or unintentional action or omission on the Company's part which had resulted in the violation of any Environmental Laws, as the same may relate to the Mortgaged Property,

(iii) no lien has been attached to any revenues or any real or personal property owned by the Company and located in the state where the Mortgaged Property is located, including, but not limited to the Mortgaged Property, for "Damages" and/or "Cleanup and Removal Costs", as such terms are hereinafter defined in any Environmental Law, or arising from an intentional or unintentional act or omission in

violation thereof by the Company or by any previous owner and/or operator of such real or personal property, including, but not limited to the Mortgaged Property,

(iv) the Company has duly complied, and shall continue to comply, with the provisions of the Environmental Laws governing it, its business, assets, property, facilities and the Mortgaged Property, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws,

(v) the Company shall not, and shall not permit any of its officers, partners, members, employees, agents, contractors, licensees, tenants, occupants or others to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with any Hazardous Material on the Mortgaged Property except in accordance with all Environmental Laws applicable thereto,

(vi) there is not now outstanding any Environmental Complaint issued by any Governmental Authority to the Company or relating to the Company's business, assets, property, and facilities or the Mortgaged Property under any Environmental Law, and there is not now existing any condition which, if known by the proper authorities, could result in any Environmental Complaint, and that

(vii) the Company has, and will continue to have, all necessary licenses, certificates and permits under the Environmental Laws relating to the Company and its facilities, property, assets, and business, and the Mortgaged Property and the foregoing are in compliance with all Environmental Laws.

(c) If the Company receives any notice of (i) the presence of Hazardous Materials on the Mortgaged Property, (ii) any violation of or noncompliance with any Environmental Law, (iii) the occurrence of a Hazardous Discharge on or about any asset, business, facility or property of the Company or caused by the Company, or (iv) any Environmental Complaint affecting the Company or the Mortgaged Property or the Company's operations, assets, business, facilities or properties, then the Company will give written notice of the foregoing to the Mortgagee within ten (10) days of receipt thereof and shall (1) promptly comply with the Environmental Laws and all other laws, regulations, resolutions and ordinances to correct, contain, cleanup, remove, resolve or minimize the impact of such Hazardous Materials, Environmental Discharge or Environmental Complaint and (2) shall at the Mortgagee's option, (i) post a bond from a surety or (ii) cause a lending institution to issue a letter of credit for the benefit of the Mortgagee and any Governmental Authority requiring the same; the surety or the lending institution, and the form, the substance and the amount of the bond or letter of credit to be satisfactory to the Mortgagee and satisfactory to the applicable Governmental Authority, or shall give to the Mortgagee and the applicable Governmental Authority such other security satisfactory in form, substance and amount to both the Mortgagee and the applicable Governmental Authority to assure that the Company does correct, contain, cleanup, remove, resolve or minimize the impact of such Hazardous Materials, Environmental Discharge or Environmental Complaint.

(d) Notwithstanding the foregoing provisions of Subsection (c) above, the Company shall have the right (i) to contest (a "Contest") by appropriate

administrative, legal or equitable proceedings, diligently prosecuted, in good faith, in its name or in the name of the Mortgagee if required by law, at the sole cost and expense of the Company, the validity or applicability of any Environmental Laws, or any Environmental Complaint against the Mortgaged Property or the Company, and (ii) to postpone compliance with the Environmental Laws until the final determination of such Contest without violating the provisions of this Mortgage provided, however:

(i) enforcement proceedings with respect to any and all Environmental Laws are deferred or stayed during the pendency of the Contest,

(ii) the Mortgagee shall not be subject to any civil or criminal or other penalties or liabilities, costs or expenses by reason of any such Contest or postponement in complying with the Environmental Laws,

(iii) the Company, at Mortgagee's request, shall (i) post a bond, cause the issuance of a letter of credit or provide such other security required under the provisions of Subsection (c) above,

(iv) the lien of this Mortgage shall not be impaired in the sole judgment of the Mortgagee and no default shall exist under this Mortgage,

(v) any Contest shall be instituted promptly after Company receives notice of the existence of any Environmental Law which imposes an obligation upon the Company or the Mortgagee or the Company receives notice of any Environmental Complaint which asserts any obligation or liability affecting the Company, the Mortgagee or all or any portion of the Mortgaged Property, and such Contest shall at all times be diligently prosecuted until a final disposition is obtained that negates such assertion of obligation or liability, and

(vi) the Company shall notify the Mortgagee in writing within ten (10) days after commencement of a Contest, and shall give the Mortgagee a monthly report, during the period of a Contest, on the Company's progress with respect thereto, and shall promptly give the Mortgagee such other information with respect thereto as the Mortgagee shall reasonably request.

(vii) The Company will, at the expense of the Company, execute and deliver any documents jurisdictionally necessary or proper to prosecute such Contest proceedings. The Mortgagee, at the cost and expense of the Company, shall have the right (but not the obligation) to join in any Contest.

(e) Without limitation of the Mortgagee's rights under this Mortgage or applicable law, the Mortgagee shall have the right, but not the obligation, to exercise any of its rights to cure as provided in this Mortgage or to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to correct, contain, cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Material, Hazardous Discharge or Environmental Complaint upon its receipt of any notice from any person or entity or Governmental Authority, informing the Mortgagee of such Hazardous Material, Hazardous Discharge or Environmental

Complaint, which if true, could adversely affect the Company or any part of the Mortgaged Property or which, in the sole opinion of the Mortgagee, could adversely affect its collateral security under this Mortgage. All reasonable costs and expenses incurred and paid by the Mortgagee in the exercise of any such rights shall be paid by the Company to the Mortgagee upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(f) Upon reasonable notice to the Company, the Mortgagee, its officers, employees, agents and contractors, may enter the Mortgaged Property to inspect it and to conduct, complete and take such tests, samples, analyses and other processes (an "Environmental Survey") as the Mortgagee shall require to determine the Company's compliance with this Subsection and the Environmental Laws. The costs, expenses and fees of the Mortgagee of such entry, inspection, tests, samples, analyses and processes shall be paid and reimbursed by the Company to the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee, with interest thereon at the rate provided to be paid on the indebtedness secured by this Mortgage, shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(g) Upon written request, the Company shall provide to the Mortgagee the following information pertaining to all operations conducted in or on the Mortgaged Property:

(i) copies of all licenses, certificates and permits under the Environmental Laws;

(ii) material safety data sheets and maps, diagrams and site plans showing the location of all storage areas and storage tanks for all Hazardous Materials or other chemicals in, used at, manufactured at, brought to or stored at the Mortgaged Property;

(iii) copies of all materials filed with any Governmental Authority;

(iv) a description of the operations and processes of the Company; and

(v) any other information which the Mortgagee may reasonably require.

(h) The Company covenants and agrees, at its sole cost and expense, to indemnify, protect, and save the Mortgagee harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, costs and reasonable attorneys' fees and disbursements, generally, and at trial and appellate level and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the Mortgagee and arising from or out of:

(i) the Company's failure to perform and comply with this Section, or

(ii) any Hazardous Material, any Hazardous Discharge, any Environmental Complaint, or any Environmental Law applicable to the Company, its operations, business, assets, property or facilities, or the Mortgaged Property, or

(iii) the imposition of any lien against the Mortgaged Property to the extent of damages caused by, or the extent of the recovery of any costs for the cleanup, release or threatened release of any Hazardous Material; or

(iv) any action against the Company under this indemnity or the assertion by the Indemnitor of any defense to its obligations hereunder.

Section 1.25. Trust Funds. In compliance with Section 13 of the New York State Lien Law, the Company will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement (as defined in Section 2 of the Lien Law of the State of New York, whether or not the Mortgaged Property is located in that State), and the Company will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

Section 1.26. Indemnity. That the Company hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including reasonable attorneys' fees) paid, incurred or suffered by or asserted against the Mortgagee at any time for, with respect to, or as a direct result of any fraud or intentional misrepresentation by the Company or any guarantor of the Debt, or the misapplication of any proceeds, or any other law or regulation or from the intentional waste of the Mortgaged Property.

ARTICLE II

DEFAULTS AND REMEDIES

Section 2.1.1. Events of Default-Optional Acceleration. The Debt shall become due, at the option of the Mortgagee, upon the occurrence of any of the following events, which event shall be an "Event of Default":

(a) after default in the payment of any installment of principal or interest as provided in the Note,

(b) after default in the payment when due and payable of any other sum of money required to be paid or expended under this Mortgage, the Note, or any other Loan Document (as hereinafter defined),

(c) if any warranty, representation or certification made herein or in any financial statement furnished pursuant hereto or in connection with the indebtedness evidenced by the Note and secured by this Mortgage (the "Loan") shall be materially false,

(d) after default in keeping the Mortgaged Property insured as herein provided,

(e) after default either in assigning and delivering the policies insuring the Improvements or the Personal Property against loss as hereinafter provided for or in reimbursing the Mortgagee for premiums paid on such insurance, as hereinabove provided for,

(f) after default after ten (10) days prior notice in furnishing a statement of the amount due on this Mortgage and whether any offsets or defenses exist against the Debt, as hereinabove provided for,

(g) if the Company intentionally does or permits to be done anything that may in any way impair the lien of this Mortgage or impair the value of the Mortgaged Property or any of the Improvements or weaken or diminish the security intended to be given under and by virtue of this Mortgage,

(h) upon the failure of the Company to perform or comply with any other term, covenant, condition or obligation of this Mortgage or of the Note or of any term, covenant, condition or obligation of any other agreement or instrument executed by the Company which secures the indebtedness evidenced by the Note (collectively, the "Loan Documents"), or of any other agreement between the Company and the Mortgagee, in accordance with the terms hereof and thereof,

(i) a default under, or any attempted withdrawal, cancellation or disclaimer of liability under, any guarantee which guarantees payment of the Debt or any part thereof, or under any agreement giving security for any such guarantee;

(j) the failure of (i) the Company, (ii) if Company is a corporation, any shareholder in Company, (iii) if Company is a partnership, any general partner in Company or any shareholder or partner in such general partner, (iv) if the Company is a limited liability company, any member, (v) any guarantor of the Debt or any part thereof or (vi) any entity directly or indirectly controlled by any of the parties covered by (i) through (vi) above, to perform or observe any term, covenant, condition or obligation of any bond, note, loan agreement, guarantee, or any other instrument or agreement in

connection with the borrowing of money or the obtaining of advances or credit, or of any instrument given to secure the same, to which such party and Mortgagee or its affiliates are parties,

(k) if a default occurs under any mortgage which is prior, equal or subordinate to the lien of this Mortgage or the mortgagee under any such prior, equal or subordinate mortgage commences a foreclosure action in connection with said mortgage;

(l) the further mortgage, pledge or encumbrance by the Company of the Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee except as provided in Section 1.14(a);

(m) the further assignment or encumbrance by the Company of the Rents arising from the Mortgaged Property, or any part thereof, without the prior written consent of the Mortgagee in each instance except as provided in Section 1.14(a);

(n) if the Company leases all or any part of the Mortgaged Property in violation of Section 1.14 hereof, or effects any changes in any lease in violation of Section 1.14 hereof;

(o) if the Mortgaged Property ceases to be leased and managed by the current member of the Company or such other person or entity as may be approved by the Mortgagee in writing pursuant to a written agreement satisfactory to the Mortgagee in form and substance;

(p) any default, for thirty (30) days after notice and demand, in the payment of any taxes of any kind and nature, assessments, water and sewer charges, rents and rates, and other governmental or municipal charges, fines or impositions relating to the Mortgaged Property or any part thereof;

(q) any failure for thirty (30) days after notice and demand to exhibit to the Mortgagee receipted bills for any taxes of any kind and nature, assessments, water and sewer charges, rents and rates, and other governmental or municipal charges, fines or impositions herein referred to;

(r) if the Mortgagee shall give the written notice specified above in Section 1.4(c) and payment is not made within the timeframe provided therein;

(s) if the Company shall terminate or modify any of the IDA Company Lease, the IDA Lease Agreement or the IDA Sublease Agreement, without the Mortgagee's consent, or if any of the IDA Company Lease, the IDA Lease Agreement or the IDA Sublease Agreement shall for any reason cease to be in full force and effect.

Section 2.1.2. Events of Default-Automatic Acceleration. The Debt shall forthwith and automatically become due, upon the occurrence of any of the following events which event shall also be an "Event of Default":

if the Company or any guarantor of the Debt or any part thereof shall:

(i) call a meeting of or make an assignment for the benefit of creditors,

(ii) file a petition in bankruptcy, under Title 11 of the U.S. Code, as amended (the "Bankruptcy Code"), or be adjudicated insolvent or bankrupt, file a petition in bankruptcy, or be adjudicated insolvent or bankrupt,

(iii) be the subject of an order for relief under the Bankruptcy Code, or petition or apply to any tribunal for the appointment of a receiver or a trustee for it or a substantial part of its assets,

(iv) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, whether now or hereafter in effect,

(v) have filed against it a petition, application or proceeding described above in subdivision (iv) or such a petition, application or proceeding shall have been commenced against it, which remains undismissed or unstayed for a period of thirty (30) days or more,

(vi) by any act or omission indicate its consent to, approval of or acquiescence in any petition, application or proceeding described above in subdivision (iv) or in the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its property,

(vii) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more,

(viii) conceal, remove or permit to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them,

(ix) make or suffer a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law,

(x) make any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid,

(xi) shall suffer or permit, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof, or

(xii) generally not pay its debts as such debts become due.

Section 2.2. Remedies. (a) Upon the occurrence of any Event of Default, the Mortgagee may, in addition to any rights or remedies available to it hereunder or at law, take such action as it deems advisable to protect and enforce its rights against the

Company and in and to the Mortgaged Property (subject to Section 3.11 hereof), including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(i) declare the entire unpaid Debt to be immediately due and payable;

(ii) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Agency and the Company and its agents and servants therefrom, and thereupon the Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat, (B) complete any construction on the Mortgaged Property in such manner and form as the Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property, (d) exercise all rights and powers of the Company with respect to the Mortgaged Property, whether in the name of the Company or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof, and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as compensation for the services of the Mortgagee, its agents and employees;

(iii) institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels, and in such order as the Mortgagee shall determine;

(iv) with or without entry and, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the lien of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Debt not then due;

(v) sell the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Company therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property;

(vi) institute an action, suit or proceeding in equity for the specific performance of any covenants, conditions or agreements contained herein or in the Note;

(vii) recover judgment on the Note before, during, after or in lieu of any proceedings for the enforcement of this Mortgage;

(viii) apply for the appointment of a custodian, trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Company, or of any person, party or entity liable for the payment of the Debt;

(ix) pursue such other remedies as the Mortgagee may have under one or more of the other Loan Documents and/or any other collateral given as security for the Loan;

(x) pursue such remedies as the Mortgagee may have under applicable law; and

(xi) foreclose this Mortgage by power of sale or any other non-judicial means permitted by the laws of the state in which the Mortgaged Property is located.

(b) The purchase money proceeds or avails of any sale made under or by virtue of this Section 2.2, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Section 2.2 or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of any such sale, including, without limitation, compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings, including, without limitation, the costs and legal expenses of the Mortgagee in foreclosing or otherwise enforcing this Mortgage, wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the Default Rate, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest with interest on the unpaid principal at the Default Rate from and after the happening of any Event of Default described above in Section 2.1 until the same is paid.

Third: To the payment of any other sums required to be paid by the Company pursuant to any provision of this Mortgage, the Note and all other Loan Documents.

Fourth: To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

The Mortgagee and any receiver or custodian of the Mortgaged Property or any part thereof shall be liable to account for only those rents, issues and profits actually received by it.

(c) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Section 2.2, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of the Company (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons or entities with like power, the Company hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Company, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 2.2, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Company in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Company and against any and all persons or entities claiming or who may claim the same, or any part thereof, either from, through or under the Company.

(e) Upon any sale made under or by virtue of this Section 2.2 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may take settlement for the purchase price by crediting upon the Debt of the Company secured by this Mortgage the net sale price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

(f) The obligation of this Mortgage and of the Note shall continue until the Debt is paid in full notwithstanding any action or actions or partial foreclosure which may be brought to recover any amount or amounts for installments of principal, interest, taxes, assessments, water and sewer charges, rents and rates or insurance or other sums or charges due and payable under the provisions of this Mortgage.

(g) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Company shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, power or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before, and notwithstanding any statutory rate of interest applicable with respect to judgments, after the entering or execution of any judgment, the Debt shall bear interest at the rate or rates payable under the Note and this Mortgage until the Debt shall have been paid in full.

(h) In the event of a foreclosure of this Mortgage or the succession by the Mortgagee to the interests of the Company hereunder, the purchaser of the Mortgaged Property or such successor shall succeed to all rights of the Company, including any right to proceeds of insurance and to unearned premiums, and in and to all policies or certificates of insurance assigned and delivered to the Mortgagee pursuant to this Mortgage.

(i) During such time that the Company shall be in default under this Mortgage, or under the Note, the Mortgagee, in the event that the Company shall not file a protest against any proposed assessed valuation of the Mortgaged Property at least fifteen (15) days prior to the last date on which such protest may be legally filed, or having filed such protest and the same having been denied, shall not have commenced a proceeding for the reduction of said assessed valuation at least fifteen (15) days prior to the last date of which such proceedings may be legally commenced, the Mortgagee may, but shall have no obligation to, file such protest or commence and prosecute such proceeding, in its own name or in the name of the Company, and the Company agrees to cooperate fully, in good faith, with the Mortgagee in the conduct of any such proceeding. All expenses of any such filing by the Mortgagee or its commencement of any such proceeding, including, but limited to, reasonable counsel fees, shall be borne by the Company, and if paid by the Mortgagee shall be reimbursed by the Company to the Mortgagee, its successors or assigns, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. All expenses incurred by the Mortgagee, as described above in this Subsection, and the interest thereon, shall be a lien on the Mortgaged Property prior to any claim, lien, title or interest in, to or on or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(j) THE COMPANY HEREBY WAIVES THE RIGHT TO TRIAL BY JURY, THE RIGHT TO CLAIM ANY OFFSET AND THE RIGHT TO ASSERT A COUNTERCLAIM IN ANY ACTION OR PROCEEDING BROUGHT BY THE MORTGAGEE TO ENFORCE ANY OF ITS RIGHTS UNDER THE NOTE OR UNDER THIS MORTGAGE.

(k) Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims and defenses of any nature whatsoever which the Company may have against any assignor of this Mortgage and the Note and no such

offset, counterclaim or defense shall be interposed or asserted by the Company in any action or proceeding brought by any such assignee upon this Mortgage and/or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Company.

(l) The Company shall not be relieved of the Company's obligation to pay the Debt at the time and in the manner provided for in the Note and this Mortgage by reason of (i) failure of the Mortgagee to comply with any request of the Company or any guarantor of the payment of the Note and/or of this Mortgage to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or of any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or the release of any individual or entity guaranteeing the payment of the Note and/or of this Mortgage, or (iii) the extension or modification of this Mortgage or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Note and/or of this Mortgage or any portion thereof, without first having obtained the consent of the Company, and in the last event, the Company shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended or modified, unless expressly released and discharged by the Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, the Mortgagee may release any person or entity at any time liable for the payment of the Debt or any portion thereof or any individual or entity guaranteeing the payment of the Note and/or of this Mortgage or any part of the security held for the Debt or with respect to any guarantee, and may extend the time of payment or otherwise modify any of the terms, covenants, conditions or obligations of the Note and/or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title and interest. The Mortgagee may resort for the payment of the Debt to any other security or guarantee held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity.

(m) The Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right to the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Company existing at the time such earlier action was commenced.

(n) The Mortgagee shall have the right to receive and accept partial payment of any sum or sums which constitute a part of the Debt or the interest accrued thereon and such receipt and acceptance by the Mortgagee shall not be deemed a waiver or modification of any default or defaults by the Company existing at such time.

(o) All remedies provided in this Mortgage are distinct from and cumulative to any other right or remedy under this Mortgage, the Note, any guarantee of the payment of the Note and/or of this Mortgage or any other agreement between, among others, if any, the Company and the Mortgagee executed simultaneously or in connection herewith, or afforded by law or equity, and may be exercised concurrently, independently or successively. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

(p) Any forbearance by the Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the Mortgagee or other corrective or security protecting measures by the Mortgagee shall not be a waiver of the Mortgagee's right to accelerate the maturity of the Debt.

(q) In any action or proceeding to foreclose this Mortgage, or to recover or collect the Debt, the provisions of law respecting the recovery of costs, disbursements and allowances shall also be applicable.

Section 2.3. Interest After Default. If any payment due hereunder or under the Note is not paid when due, whether on any stated due date, any accelerated due date or any other date or at any other time specified under any of the terms, covenants, conditions or obligations hereof or thereof, then and in such event, the Company shall pay interest on the entire outstanding and unpaid principal balance of the Debt, from and after the date on which such amount first became due, at the Default Rate and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to the Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. All accrued but unpaid interest shall be secured by this Mortgage as part of the Debt together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Nothing in this Section 2.3 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Debt or shall increase the maximum principal amount which may under any contingency be secured by this Mortgage.

Section 2.4. Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder, the Company agrees to surrender possession of the Mortgaged Property to the Mortgagee and the Mortgagee may thereupon enter upon and take possession of the Mortgaged Property, enforce performance of and exercise any and all of its rights and remedies under this Mortgage, the Note and the other Loan Documents and apply the same on account of the indebtedness secured hereby, whether then matured or not, after payment of all proper charges and expenses, including, but not limited to, (i) Taxes, (ii) premiums for fire, public liability and other insurance coverage affecting the Mortgaged Property or any part thereof and (iii) any and all other costs, charges and expenses which it may be necessary or advisable for the Mortgagee to pay in

connection with completing the Mortgaged Property and/or managing, operating, maintaining or leasing the Mortgaged Property or any part thereof, including, but not limited to, the cost of making repairs and alterations, commissions for renting the Mortgaged Property or any part thereof, and legal expenses incurred in enforcing claims, preparing papers or any other services that may be required, or otherwise as a court of competent jurisdiction may direct. After taking possession of the Mortgaged Property, the Mortgagee may dispossess, by summary proceedings or otherwise, the Company, the Corporate Guarantor or other occupants of the Mortgaged Property or any part thereof then or thereafter in default in the payment of any rent, and the Company hereby irrevocably appoints the Mortgagee its true and lawful agent and attorney-in-fact (which agency shall be deemed to be coupled with an interest), with full power of substitution, for such purpose. In the event that the Company is then an occupant of the Mortgaged Property or any part thereof, it agrees to surrender possession of the Mortgaged Property or part thereof so occupied to the Mortgagee upon demand, and if the Company remains in possession after such demand, such possession shall be as tenant of the Mortgagee, and the Company agrees to pay monthly in advance to the Mortgagee such rent for the Mortgaged Property or part thereof so occupied as the Mortgagee may reasonably demand, and in default of so doing, the Company may also be dispossessed by summary proceedings or otherwise.

Section 2.5. Right To Cure Default. The Mortgagee shall have the right, but not the obligation, to comply with, perform or observe any covenant or obligation which the Company has failed to comply with, perform or observe under this Mortgage, the Note, or any other Loan Document and shall have the right to enter the Mortgaged Property at any time and from time to time for the purpose of curing such default, and any amounts so paid by the Mortgagee or the costs of such performance, together with all costs and expenses incurred by the Mortgagee in connection with such payment or performance, including, but not limited to, reasonable attorneys' fees and disbursements and interest on all such amounts, costs and expenses at the per annum rate equal to the maximum interest rate permitted by law, shall be paid by the Company, to the Mortgagee on demand. Until so paid, all such amounts, costs and expenses, together with interest thereon, shall be secured by this Mortgage and, if not paid, may be added to the judgment in any foreclosure action.

ARTICLE III

MISCELLANEOUS

Section 3.1. Notices. All notices or other communications required or otherwise given pursuant to this Mortgage shall be in writing and shall be personally delivered, delivered by overnight courier or mailed by registered or certified mail, postage prepaid, with return receipt requested, addressed as follows:

If to the Agency:

New York City Industrial Development Agency
110 William Street

New York, New York 10038
Attn: Executive Director (with a copy to the General Counsel)

If to the Company:

128 44TH REALTY HOLDING LLC
271 40th Street
Brooklyn, New York 11232
Attn: Nicky Barone

If to the Mortgagee:

SI BANK & TRUST, a division of SOVEREIGN BANK
1535 Richmond Avenue
Staten Island, New York 10314

Any party may change the person or address to whom or which notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed. Any notice or other communication given hereunder shall be deemed to have been given or delivered, if personally delivered, upon delivery, if sent by overnight courier, on the first (1st) business day of the Mortgagee after being sent, and if sent by mail, on the third (3rd) business day of the Mortgagee after mailing. Each party shall be entitled to rely on all communications which purport to be given on behalf of any other party hereto and purport to be signed by an authorized signatory of such party.

Section 3.2. Consent to Jurisdiction; Waivers. (a) The Company hereby consents to the jurisdiction of the courts of the State of New York and the state where the Mortgaged Property is located if the Mortgaged Property is not located in the State of New York in any actions, suits or proceedings arising out of or in connection with the Note or this Mortgage. In addition, the Company irrevocably and unconditionally waives any objection which the Company may now or hereafter have to the laying of venue of any of the aforesaid actions, suits, or proceedings arising out of or in connection with the Note or this Mortgage brought in any of the aforesaid courts, and hereby further irrevocably and unconditionally waives the right to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum; and

(b) The Company waives the requirements of personal service in connection with any actions, suits or proceedings arising out of or in connection with the Note or this Mortgage, and consents that all service of process may be made by certified mail, return receipt requested, addressed to the Company at the address of the Company set forth above in Section 3.1 as such address may be changed as therein set forth.

Section 3.3. Governing Law. Except to the extent that the law of the state where the Mortgaged Property is located must be applied because this Mortgage constitutes a

lien on premises located in that state, this Mortgage shall be construed in accordance with the laws of the State of New York, as the same may be in effect from time to time.

Section 3.4. Binding Obligations. The terms, covenants, provisions and conditions herein contained shall bind and inure to the benefit of the heirs, distributees, executors, administrators, successors and assigns of the parties hereto but the foregoing provisions of this Section shall not constitute a waiver of the provisions of Sections 1.13 and 1.14 above.

Section 3.5. Further Assurances. The Company will, at the request of the Mortgagee and at the cost and expense of the Company (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage, or in the execution, acknowledgment or recordation hereof, or (b) promptly do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, mortgages, deeds of trust, amendments, supplements, assignments, estoppel certificates, financing statements and continuations thereof, notices of assignment, transfers, certificates, assurances and other instruments as the Mortgagee may reasonably require from time to time in order to (i) effectuate the purposes of this Mortgage, (ii) subject to the lien and security interest hereby created any of the Company's properties, rights or interests covered or now or hereafter intended to be covered hereby, (iii) perfect and maintain such lien and security interest, or (iv) convey, grant, assign, transfer and confirm unto the Mortgagee the rights granted or now or hereafter intended to be granted to the Mortgagee hereunder or under any other instrument executed in connection with this Mortgage or which the Company may be or become bound to convey, mortgage or assign to the Mortgagee in order to carry out the intention or facilitate the performance of the provisions of this Mortgage. The Company hereby appoints the Mortgagee as its attorney-in-fact to execute, acknowledge and deliver for and in the name of the Company any and all of the instruments mentioned in this Section 3.5 and this power, being coupled with an interest, shall be irrevocable as long as any part of the Debt remedies unpaid.

Section 3.6. Captions. The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or describe the scope or intent of this Mortgage or any of the provisions hereof.

Section 3.7. Severability. If any term, covenant, condition or obligation of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such term, covenant, condition or obligation.

Section 3.8. Set-Off. The Company, to further secure the Debt, hereby (a) pledges and grants to the Mortgagee a security interest in and to and a lien on, any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Mortgagee or any affiliate of the Mortgagee to or for the credit or account of the Company (collectively, "Deposits"), and (b) irrevocably authorizes and directs the Mortgagee or any affiliate thereof at any time and from time to time upon the occurrence of an Event of Default under this Mortgage, or a default under the Note or any other Loan Document, without notice to the Company (any such notice being expressly waived by the Company) and to the fullest extent permitted

by law, to set off and apply any such Deposits against any and all obligations of the Company now or hereafter existing under the Loan Documents, or to hold such Deposits for future application against obligations thereafter arising under any of the Loan Documents irrespective of whether or not the Mortgagee shall have made any demand under any of the Loan Documents and although such obligations may be contingent or unmatured. From and after the date of the occurrence of any default under any of the Loan Documents, the Mortgagee shall have dominion and control over such Deposits and shall have the sole ability to make withdrawals with respect to such Deposits. The Mortgagee agrees promptly to notify the Company after any such application made by the Mortgagee; provided, however, that the failure to give such notice shall not affect the validity of such application. The rights of the Mortgagee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Mortgagee may have hereunder or under applicable laws.

Section 3.9. General Conditions. (a) No provision of this Mortgage may be waived, changed, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the waiver, change, amendment, modification or discharge is sought.

(b) The Mortgagee may take or release other security for the payment of the Loan, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Loan without prejudice to any of its rights under this Mortgage.

(c) Subject to Section 3.11 hereof, no remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Nothing in this Mortgage or in the Note shall affect the obligation of the Company to pay the Debt in the manner and at the time and place therein respectively expressed. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, the Company: (i) will not (A) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect any of the terms, covenants, conditions or obligations of this Mortgage, or (B) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction; (ii) waives all benefit or advantage of any such law or laws; (iii) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted; and (iv) waives all right

to have the Mortgaged Property, or any other property of the Company to which the Mortgagee has, or may in the future have, a claim, marshaled upon any foreclosure hereof.

(d) No waiver by the Mortgagee or modification of the terms hereof shall be effective unless it is in writing and then only in the specific instance and for the specific purpose for which given and, notwithstanding anything to the contrary herein, all such waivers and modifications may be given or withheld in the sole judgment of the Mortgagee. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals, levies, fees or any other charges affecting the Mortgaged Property, shall not constitute a waiver of the Company's default in making such payments and shall not obligate the Mortgagee to make any further payments. The Company hereby irrevocably waives any right to claim that any provision of this Mortgage, including the provisions set forth in this Subsection, have been waived orally or by the acts or omissions of the Mortgagee.

(e) THE COMPANY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS MORTGAGE.

(f) If the Company shall request the Mortgagee's consent or approval pursuant to any of the provisions of this Mortgage or otherwise, and the Mortgagee shall fail or refuse to give, or shall delay in giving, such consent or approval, the Company shall in no event make, or be entitled to make, any claim for damages (nor shall the Company assert, or be entitled to assert, any such claim by way of defense, set-off, or counterclaim) based upon any claim or assertion by the Company that the Mortgagee unreasonably withheld or delayed its consent or approval, and the Company hereby waives any and all rights that it may have, from whatever source derived, to make or assert any such claim. The Company's sole remedy for any such failure, refusal, or delay shall be an action for a declaratory judgment, specific performance, or injunction, and such remedies shall be available only in those instances where the Mortgagee has expressly agreed in writing not to unreasonably withhold or delay its consent or approval or where, as a matter of law, the Mortgagee may not unreasonably withhold or delay the same.

(g) This Mortgage shall (i) be binding upon the Company and the Agency and their successors and assigns, and (ii) inure, together with all rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and its successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Mortgagee may assign or otherwise transfer all or any portion of its rights and obligations under any Loan Document, to any other person or entity, and such other person or entity shall thereupon become vested with all of the rights and obligations in respect thereof granted to the Mortgagee herein or otherwise. None of the rights or obligations of the Company and/or the Agency hereunder may be assigned or otherwise transferred without the prior written consent of the Mortgagee, except that the Agency's rights and obligations may be assigned or transferred in accordance with the IDA Lease Agreement.

(h) Without limiting the generality of Subsection (g) above, the Company hereby acknowledges that the Mortgagee may sell, grant or assign participation interest(s) in the Loan and in the Mortgagee's rights and obligations in respect of the Loan Documents, including this Mortgage, to one or more lending institutions satisfactory to the Mortgagee, on terms satisfactory to the Mortgagee. In the event that the Mortgagee shall sell, grant or assign participation interest(s) in the Loan and in the Mortgagee's rights and obligations in respect of the Loan Documents, (i) the Mortgagee may, in its sole discretion, disclose financial and other information to prospective participant(s) with respect to the Company, (ii) the Company shall cooperate with the Mortgagee in connection with any such participation and shall execute any and all documents which may be required or desirable, in the Mortgagee's or such participants' judgment, to effectuate any such participation(s), and (iii) each representation and agreement made by the Company in this Mortgage or in any of the other Loan Documents shall run to, and each reference to the Mortgagee shall be deemed to refer to, the Mortgagee and all of its participants(s).

(i) If the Company consists of more than one person or entity, the obligations and liabilities of each such person or entity hereunder shall be joint and several. The relative words herein of single or plural number, or masculine or feminine or neuter gender shall be read as if written in the single or plural, or in the male, neuter or female gender, as the context and as the case may be.

(j) Any check, draft, money order or other instrument given in payment of all or any portion of the Note or pursuant to this Mortgage may be accepted by the Mortgagee and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of the Mortgagee, except to the extent that actual cash proceeds of such instrument are unconditionally received by the Mortgagee and applied as the case may be to the Debt in the manner provided in the Note or to the sum due under this Mortgage.

(k) The Company represents that the Mortgaged Property is not improved by one or more structures containing, in the aggregate, not more than six residential units, each unit with separate cooking facilities.

(l) If the Company shall well and truly pay to the Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every term, covenant, condition and obligation set forth in this Mortgage and in the Note, then these presents and the estate hereby granted shall cease, terminate and be void.

(m) This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

(n) Nothing in this Mortgage shall be deemed to amend any of the terms of the IDA Company Lease, the IDA Lease Agreement, or the IDA Sublease Agreement or any documents, instruments or agreements entered into in connection with the IDA Lease Agreement.

Section 3.10. Representations and Warranties of the Agency. The Agency represents and warrants only that it has the power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in its interest in the Mortgaged Property as provided in this Mortgage and to own its property and assets, has duly authorized the execution and delivery of this Mortgage by proper corporate action, and neither this Mortgage, the authorization, execution, delivery and performance hereof by the Agency, the performance by the Agency of the agreements herein contained nor the consummation by the Agency of the transactions herein contemplated will violate any provision of law applicable to the Agency, any order of any court or agency of government applicable to the Agency or any agreement, indenture or other instrument to which the Agency is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any indenture, agreement or other instrument to which the Agency is a party or any provision of its by-laws or any other requirement of law. This Mortgage constitutes the legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.11. Limitation on Agency Liability. With respect to the Agency, it is agreed that the Agency, its officers, members, employees, agents and directors shall have no personal liability hereunder, nor in their capacity as officers, members, employees, agents and directors. The Agency has executed this Mortgage to subject its interest in the Mortgaged Property to the lien of this Mortgage; however, the Mortgagee shall have no recourse to the Agency other than to its interest in the Mortgaged Property. No provision, covenant or agreement contained in this Mortgage or any obligations herein imposed upon the Agency or the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Mortgage, the Agency has not obligated itself except with respect to the Mortgaged Property. All covenants, stipulations, promises, agreements and obligations of the Agency contained herein shall be deemed to be 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, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Mortgage. No covenant herein contained shall be deemed to constitute 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 covenant herein contained, nor shall the obligations secured by this Mortgage be payable out of any funds of the Agency.

Section 3.12. Joinder. The Agency is executing this Mortgage in order to mortgage and grant a security interest to the Mortgagee in all of the Agency's right, title and interest in and to the Agency's leasehold interest in the Land and the Improvements under the IDA Company Lease.

Section 3.13. Company's Representations and Covenants. The Agency is not obligated and shall not be liable to any extent for the representations and covenants of the Company made in or contained in this Mortgage.

Section 3.14. Agency is Executing Mortgage at Company's Direction. The Company directs the Agency to execute and deliver this Mortgage to the Mortgagee and consents and agrees to be bound by the terms hereof to the extent of the Company's present or future interest in the Mortgaged Property and hereby executes this Mortgage to evidence its agreement to comply with the covenants contained herein, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) in connection with the execution, delivery, recording, performing and enforcing of this Mortgage.

Section 3.15. Modification of IDA Documents. The Company covenants not to terminate or modify the IDA Lease Agreement or any other document executed in connection with the foregoing, or any related agreements with the Agency (collectively, the "IDA Documents") without the prior consent of the Mortgagee.

Section 3.16. Termination of IDA Lease Agreement. Upon the termination of the IDA Lease Agreement for any reason whatsoever and at the sole cost and expense of the Company, but solely upon the request of the Agency, the Mortgagee shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents reasonably necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

Section 3.17. Notices under IDA Documents and Leases. The Company shall forward to the Mortgagee copies of any and all notices (including all notices of default) and transmittal letters (including transmittal letters of principal and interest) delivered in connection with the IDA Documents and sublease immediately, but in any event no later than one (1) day after mailing or receiving such notices and letters.

Section 3.18. Certificate of Occupancy. The Company shall obtain a Permanent Certificate of Occupancy or Certificate of Completion ("Certificate") for the Mortgaged Property incorporating all additions and improvements indicated by the open building permits #300162525/1992 and #301327632/2002 and deliver said Certificate to the Mortgagee on or before February 29, 2008.

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SCHEDULE A

Property Description

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

AND SAID PREMISES being known as and by the street number 128 44th Street, Brooklyn, New York 11232.



Copy

MORTGAGE NOTE

\$2,915,000.00

New York, New York

August 29, 2007

FOR VALUE RECEIVED, the undersigned, 128 44TH REALTY HOLDING LLC a New York limited liability company with a place of business at 271 40th Street, Brooklyn, New York 11232 ("Borrower"), promises to pay to the order of SI BANK & TRUST, a division of SOVEREIGN BANK, a federal savings bank (the "Bank") having an office at 1535 Richmond Avenue, Staten Island, New York 10314 (or such other place designated by the holder of this Note in writing) the principal sum of TWO MILLION NINE HUNDRED FIFTEEN THOUSAND AND 00/100 (\$2,915,000.00) DOLLARS, together with interest thereon from the date hereof at the rates set forth herein and in accordance with the terms and conditions hereof.

1. Principal and Interest

(i) commencing on October 5, 2007 and on the 5th day of each and every month thereafter up to and including September 5, 2017 the sum of \$19,682.29, each of such payments to be applied by the Bank first to the payment of accrued interest on the Principal Sum, at a rate of 6.500% per annum ("Initial Interest Rate"), and the balance to the reduction of the Principal Sum;

(ii) the interest rate will change on the 5th day of September, 2017 (the "Change Date"). The interest rate will adjust on the Change Date to a rate (the "New Interest Rate") equal to the annualized interest rate for the ten (10) year Treasury Bills as reported by the Federal Reserve Board on a weekly average (the "Index") plus two (2.00%) percentage points rounded to the nearest whole one eighth of one percentage point. If the Index is no longer available, the Bank will choose a new index which is based upon comparable information. The Bank will give Borrower notice of this choice;

(iii) commencing on the 5th day of the month next following the Change Date and on the 5th day of each and every month thereafter up to and including the 5th day of the calendar month next preceding the "Maturity Date" as defined below, monthly payments of principal and interest at the New Interest Rate in an amount calculated to fully amortize the unpaid principal balance of the Loan on the basis of a fifteen (15) year amortization schedule, to be applied first to the payment of accrued interest and the balance to the reduction of the Principal Sum;

(iv) the unpaid Principal Sum, together with all accrued and unpaid interest as provided in this Note, and all other sums due and payable under the Note and Mortgage, on the 5th day of September, 2027 (the "Maturity Date"), or on such earlier date, upon acceleration, in the event of a default hereunder or otherwise.

(v) the final payment (whether payable on the Maturity Date or otherwise) shall equal all outstanding principal together with all accrued and unpaid interest. Interest during the term of the

Copy

Note shall be calculated on the basis of a 360 day year and the actual number of days elapsed.

2. Prepayments

(a) The principal balance may be prepaid in whole or in part at any time provided that the Borrower shall concurrently with the prepayment pay all accrued interest on this Note and the Borrower shall also pay the amounts set forth in Subsection (b) below. There shall be no prepayment fee if the loan is repaid from the sale of the Premises. Partial prepayments, less any applicable penalty shall be applied directly to principal reduction.

(b) The Borrower shall pay to the Bank a prepayment fee if any prepayment is made during the term of the loan evidenced by this Note calculated as follows:

<u>Prepayment Period</u>	<u>Prepayment Fee</u>
1 st year	3% of the amount prepaid
2 nd year	2% of the amount prepaid
3 rd year	1% of the amount prepaid

(c) It is understood that "year" shall be defined to mean each annual period commencing on the date of execution of this mortgage and ending the day before the anniversary date of such event.

3. Payments.

The Borrower agrees that all payments due under this Note and the Mortgage (as hereinafter defined) shall be made by automatic debit from an account maintained by the Borrower at the Bank, in which the Borrower shall maintain balances sufficient to pay each monthly payment due to the Bank under this Note and the Mortgage. In the event that the money maintained in such account is insufficient for any payment due under this Note and the Mortgage, the Bank may charge any account of the Borrower for any payment due to the Bank under this Note and the Mortgage. If any payment of this Note becomes due and payable on a day which is not a business day, the maturity thereof shall be extended to the next succeeding business day and interest thereon shall be payable during such extension. If any payment of this Note becomes due and payable on a day which is not a business day, the maturity thereof shall be extended to the next succeeding business day and interest thereon shall be payable during such extension.

4. Usury

If the provisions of this Note would at any time otherwise require payment by the Borrower to the Bank of any amount of interest in excess of the maximum amount then permitted by applicable law the interest payments shall be reduced to the extent necessary so that the Bank shall not receive interest in excess of such maximum amount.



FILE NO.: D07-0823
TITLE NO.: RT-35185
PREMISES: 128 44th Street
COUNTY: Kings
STATE: New York
Section: 3
Block: 735
Lots: 50

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

128 44TH REALTY HOLDING LLC

to

SI BANK & TRUST, a division of SOVEREIGN BANK

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS**

RETURN BY MAIL TO:

Cullen and Dykman LLP
44 Wall Street, 17th Floor
New York, New York 10005
Att: Patricia E. Russo, Esq.

WHEREAS, to accomplish its stated purposes, the Agency has entered into negotiations with the Company and Barone Steel Fabricators, Inc., a New York corporation (the "Sublessee") for the providing of financial assistance (as defined in the Act) in connection with an industrial project for the Company and the Sublessee located at 128 44th Street, Brooklyn, New York 11232; and

WHEREAS, pursuant to a certain Company Lease Agreement, dated as of August 1, 2007 between the Company as landlord and the Agency as tenant (the "IDA Company Lease"), the Company has leased the Land and the Improvements (as each such capitalized term is hereinafter defined) to the Agency, which IDA Company Lease is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Agency has subleased the Land and the Improvements to the Company pursuant to a certain Lease Agreement, dated as of August 1, 2007 (the "IDA Lease Agreement") by and between the Agency and the Company, which IDA Lease Agreement is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Company has subleased the Land and the Improvements to the Sublessee pursuant to a certain Sublease Agreement, dated as of August 1, 2007, between the Company and the Sublessee (the "IDA Sublease Agreement"), which IDA Sublease Agreement is intended to be recorded in the Kings County Register's Office; and

WHEREAS, the Bank has agreed to lend to the Company the principal sum of ONE MILLION NINE HUNDRED FORTY FIVE THOUSAND AND 00/100 (\$1,945,000.00) DOLLARS lawful money of the United States, to be paid, with interest thereon (as such sum may be reduced from time to time, together with the interest thereon, hereinafter sometimes collectively referred to and described as the "Debt"), according to a certain mortgage note or obligation of the Company bearing even date herewith (which, as now exists, and as the same may hereafter, from time to time be extended, amended, modified, restated or superseded, hereinafter collectively referred to as the "Note"); and

WHEREAS, the Debt will be secured by this Mortgage, which is intended to be recorded in the Kings County Register's Office, and which encumbers the Company's fee interest in the Mortgaged Property and the Agency's leasehold interest under the IDA Company Lease in the Land and the Improvements; and

WHEREAS, payment of the principal of, premium, if any, and interest on all sums due pursuant to the Note will be guaranteed jointly and severally by the Sublessee, Barfab Steel Corp., Nicky Barone and Ralph Barone (collectively, the "Guarantors") pursuant to a certain Joint and Several Guaranty dated as of the date hereof (the "Guaranty");

NOW THIS INDENTURE WITNESSETH that for better securing the payment of the Debt, and the performance by the Company and the Agency of their respective, covenants, conditions and obligations contained herein, in the Note and in any other documents and agreements given to secure payment of the Note according to the true

intent and meaning thereof, and also for and in consideration of one dollar to the Company and the Agency in hand paid by the Mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Company and the Agency have mortgaged, granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do mortgage, grant, bargain, sell, alien, release, convey and confirm their respective interests unto the Mortgagee, forever, and grant the Mortgagee a security interest in their respective interests in:

MORTGAGED PROPERTY

A. All the land located in the County of Kings and State of New York described in Schedule A annexed hereto and made a part hereof and known by the street address of 128 44th Street, Brooklyn, New York 11232 (the "Land") (including the fee interest of the Company therein and the Agency's leasehold interest therein pursuant to the IDA Company Lease).

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (the "Improvements").

TOGETHER with all and singular rights, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, including, but not limited to:

C. All fixtures, machinery, appliances, materials, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by the Agency and/or Company and located in or on, or attached to, or used, or intended to be used, in connection with the operation of, or with construction on, the Land or the Improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of the Company in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made by the Company or on its behalf with regard thereto (the "Personal Property").

D. All right, title and interest of the Agency and the Company, if any, in and to the land in the bed of the streets or highways abutting the Land to the center line thereof; all easements, rights of way, strips and gores of land, streets, ways, sidewalks, curbs, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, remainders, reversions and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Agency and/or the Company (the "Appurtenances").

E. All leases, lettings, occupancy agreements and licenses, excluding any of such as shall constitute the Excluded Property (as defined below) (collectively, but expressly omitting the Excluded Property, the "Leases") of the Land and/or the Improvements or any part thereof now or hereafter entered into and all right, title and interest of the Agency and the Company thereunder (other than the Excluded Property but including, without limitation, the cash and securities deposited thereunder), the right

to receive and collect the rents, issues and profits from the Leases (excluding the Excluded Property) (omitting the Excluded Property, the "Rents") and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Agency and the Company of, in and to, and all proceeds of any sales or other dispositions of, the property described in Paragraphs (A), (B), (C) and (D) above and this Paragraph (E), (but omitting, however, the Excluded Property).

F. All proceeds of and any unearned premiums on any insurance policies covering the Improvements or the Personal Property or the Rents including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof; excluding, however, any liability insurance proceeds in favor of the Agency.

G. All awards ("Awards"), heretofore made and hereafter to be made by any municipal, state or federal authorities to the Agency and/or the Company and all subsequent owners of the property described above in Paragraphs (A) through (E) including any awards for any changes of grade of streets affecting the property described above in Paragraphs (A) through (E) as the result of the exercise of the power of eminent domain (a "Taking").

H. All plans, drawings, specifications, site plans, subdivision maps, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the development of the Land and the construction of the Improvements (but omitting, however, the Excluded Property).;

I. All contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, and supply of any materials or the conduct of operations in and the management of the Mortgaged Property including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized, affecting the Land and/or the Improvements or the public improvements required to be installed under the terms of governmental approvals relating to the subdivision in which the Land is a part (but omitting, however, the Excluded Property);

J. Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Land and/or the Improvements and/or any other portion of the Mortgaged Property including, without limitation, certificates of occupancy, building permits, environmental certificates, certificates of operation, warranties and guarantees;

K. All the other estate, right, title, interest, use, possession, property, claim and demand whatsoever, contract rights, general intangibles, actions and rights in action, relating to the property described above in Paragraphs (A) through (J) and proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing; provided, however, the Mortgaged Property shall not mean and shall not include the "Excluded Property" which is defined to mean the IDA Lease Agreement and any amounts paid or payable thereunder, and the IDA Sublease

Agreement and any amounts paid or payable thereunder other than the right to receive or enforce payment of amounts under Section 5(d) of the IDA Sublease Agreement.

All the property, interests and rights referred to in Paragraphs (A) through (K) above and any additional property, interests or rights hereafter acquired by the Company and subject to the lien of this Mortgage or intended to be so are referred to in this Mortgage as the "Mortgaged Property", except that the Excluded Property shall not constitute part of the Mortgaged Property nor be subject to the lien, pledge, or security interest of this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property to the Mortgagee, its successors and assigns, forever.

The Agency and the Company hereby grant to the Mortgagee a security interest in all rights and property described above in Paragraphs (C) and Paragraphs (E) through Paragraph (K), to the extent of their respective interest therein (collectively, the "Collateral"). This Mortgage shall constitute a self-operative Security Agreement under Article 9 of the Uniform Commercial Code with respect to such rights and property, but the Agency (at the sole cost and expense of the Company) and the Company agree to execute and deliver on demand such other instruments as the Mortgagee may request in order to create or perfect its security interest or to impose the lien hereof more specifically upon any of such rights and property. The Mortgagee shall have all the rights and remedies under this Mortgage, or under any applicable law or agreements with the Agency and/or the Company, of a Secured Party under the Uniform Commercial Code in addition to those specified herein.

ARTICLE I

TERMS, COVENANTS, CONDITIONS, REPRESENTATIONS AND WARRANTIES

The Agency and the Company covenant, represent and warrant to the Mortgagee as follows, provided that each of the Agency and the Company covenant, agree and represent only with respect to the covenants, representations and warranties of each and not of the other:

Section 1.1. Payment of Debt. The Company will pay the Debt as provided in the Note and the Company will pay all amounts due and owing by the Company under the IDA Lease Agreement in accordance with its terms.

Section 1.2. Maintenance of the Mortgaged Property and Compliance with Laws. The Company, shall (at its expense in so far as is applicable by the context):

(a) maintain the Improvements in good and substantial order and repair and in such fashion that the value and utility of the Mortgaged Property will not be diminished and will make or cause to be made all necessary and appropriate repairs, replacements, and renewals thereof, whether interior or exterior, structural or non-

structural; all repairs, replacements and renewals to be at least equal, in quality and class, to that of the original Improvements;

(b) not use or cause the whole or any part of the Mortgaged Property to be used in such a manner as to cause the same to be subject to forfeiture under applicable laws. In the event that any person or entity, in possession of the whole or any part of the Mortgaged Property, or otherwise, may, by acts or omissions, cause the Mortgaged Property to be subject to forfeiture, the Company, within five (5) days after receiving notice of the occurrence of any such act or omission, shall notify the Mortgagee of the occurrence of such act or omission and shall commence such legal proceedings against the party committing or permitting the acts or omissions as shall be necessary to prevent such forfeiture;

(c) comply with, or cause to be complied with, all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorization, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers which may, as at the date of this Mortgage or thereafter, affect the Mortgaged Property or any part thereof or its use or condition, or which may affect any adjoining sidewalks, curbs, vaults and vault space if any, or streets or ways in so far as the Company is required to comply therewith;

(d) comply with, or cause to be complied with, all requirements of the issuer of any policy(s) of insurance covering or affecting the whole or any part of the Mortgaged Property, and all orders, rules, regulations and other requirements of the New York Board of Fire Underwriters (or that of any other body exercising similar functions) applicable to the Mortgaged Property or any part thereof; and

(e) not do or permit any act or thing which is contrary to the requirements or prohibitions of any document of record affecting the Mortgaged Property nor commit or permit any waste of or any nuisance in, at or on the Mortgaged Property or any part thereof.

Section 1.3. Alterations. The Company covenants that none of the Improvements or any part or portion thereof, and none of the Personal Property or any part or portion thereof, shall be removed, altered or demolished without the prior written consent of the Mortgagee in each instance, provided, however, that the Company shall have the right, without the consent of the Mortgagee, to remove and dispose of, free from the lien of this Mortgage, such Personal Property as from time to time may become worn out or obsolete, provided that, simultaneously with or prior to such removal, any such Personal Property shall be replaced with Personal Property of like kind and value at least equal to that of the replaced Personal Property and free from any title retention, security interest or other encumbrance.

Section 1.4. Taxes and Other Charges; Mortgage Taxes. (a) The Company will pay when due (i) all liens of any kind, taxes or any kind and nature (including but not limited to real and personal property taxes and income, franchise, withholding profits and gross receipts taxes), assessments, water rates, sewer rents, rents and rates, and other

governmental or municipal charges, fines or impositions relating to the Mortgaged Property or any part thereof, and (ii) taxes upon the rents, revenues, income or profits of the Mortgaged Property, or taxes arising in respect of the occupancy, use or possession of the whole or any part thereof, which, if not paid, shall result in the imposition of a lien upon the Mortgaged Property, and the Company will promptly deliver official receipts therefor to the Mortgagee.

(b) After prior notice to the Mortgagee, in the case of any material item, the Company, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no default shall have occurred and shall be continuing under the Note or this Mortgage, (ii) the Company is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (iii) such proceeding shall suspend the collection of the contested Taxes from the Company and from the Mortgaged Property, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Company or the Mortgaged Property is subject and shall not constitute a default thereunder, (v) neither the Mortgaged Property nor any part thereof nor any interest therein will in the opinion of the Mortgagee be in danger of being sold, forfeited, terminated, canceled or lost, and (vi) the Company shall have set aside in an interest-bearing account with the Mortgagee, and otherwise in a manner satisfactory to the Mortgagee, adequate cash reserves for the payment of the contested Taxes, together with all interest and penalties thereon, or in the alternative the Company shall have furnished such security as may be required in the proceeding, or as may otherwise be requested or required by the Mortgagee to insure the payment of the contested Taxes, together with all interest and penalties thereon, and, provided further, that if at any time the Mortgagee determines, in its sole and absolute discretion, that payment of any tax, assessment or other charge shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment of any such sums, then the Company shall pay or cause to be paid the sums in sufficient time to prevent the delivery of such tax deed.

(c) If a default shall occur under the Note or this Mortgage either prior to, or after, initiating said proceeding, the Mortgagee shall have the right to either initiate or continue said proceeding, as the case may be, either in its own name or as agent of the Company. The Company shall cooperate with the Mortgagee and make available to the Mortgagee upon demand any and all information, and execute any documents or pleadings, which the Mortgagee may reasonably require. The Mortgagee shall then conduct said proceeding in a manner it deems appropriate, and at its own expense, subject to any right of reimbursement from the Company in accordance with the provisions of this Mortgage.

Section 1.5. Tax Deposits. Notwithstanding anything to the contrary contained in this Mortgage, the Mortgagee may require that the Company deposit with the Mortgagee, monthly, one-twelfth (1/12th) of the annual charges for ground or other rent, if any, real estate taxes, assessments, water, sewer and other charges which might become a lien upon the Mortgaged Property (or any part thereof) and, if requested by the Mortgagee, insurance premiums, and the Company shall, accordingly, make such deposits. No such

payment by the Company to the Mortgagee relative to payments in lieu of real estate taxes shall modify or limit, or be deemed any payment toward, the obligations of the Company under Section 4.3 of the IDA Lease Agreement. In addition, the Company may simultaneously therewith deposit with the Mortgagee a sum of money which, together with the monthly installments aforementioned, will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date on which such payments are due. Should said charges not be ascertainable at the time any deposit is required to be made with the Mortgagee, the deposit shall be made on the basis of an estimate made by the Mortgagee in its sole discretion, and when the charges are fixed for the then current year, the Company shall deposit any deficiency with the Mortgagee. All funds so deposited with the Mortgagee shall be held by it, but not in escrow and, except to the extent required by applicable law, without interest, and, provided that no "Event of Default" (as defined below in Section 2.1.1), shall have occurred and be continuing, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Should an Event of Default occur and be continuing, the funds deposited with the Mortgagee, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Debt or any other charges affecting the security of the Mortgagee, as the Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided, nor shall any application be deemed to affect any right or remedy of the Mortgagee hereunder or under any statute or rule of law.

Section 1.6. Warranty of Title. The Company warrants that (i) it has a good and marketable title to an indefeasible fee estate in the Land and is lawfully possessed of the Land, and the Agency has a valid and subsisting leasehold estate in the Land pursuant to the IDA Company Lease, in each case subject only to such encumbrances as are listed as exceptions to title in the title policy insuring the lien of this Mortgage (the "Permitted Encumbrances"); (ii) the Land is free and clear of any lien, charge or encumbrance thereon or affecting the title thereto prior to this Mortgage (other than the Permitted Encumbrances); (iii) the Company is well and truly seized of the Improvements, Equipment and other Mortgaged Property, and neither the Agency nor the Company have heretofore assigned their respective interests in the same; (iv) the Company will maintain and preserve the lien of this Mortgage until the Note has been paid in full; (v) the Company and the Agency have good right and lawful authority to mortgage and pledge the Mortgaged Property, as provided in this Mortgage; and (vi) the Company, at its sole cost and expense, will forever warrant and defend the Land against any and all claims and demands whatever, except the exceptions to the title set forth in clause (i) above as are specifically set forth in this Mortgage.

Section 1.7. Right of Mortgagee to Defend and Uphold the Lien; Costs. (a) The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Company, which the Mortgagee, in its sole discretion, believes should be brought to protect its interest in or the title to the Mortgaged Property. The Mortgagee may take such action by attorneys selected by the Mortgagee.

(b) If any action or proceeding be commenced, whether adversary or not (including an action to foreclose this Mortgage or to collect the Debt), to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend, uphold or enforce the lien of this Mortgage, the Mortgagee may prosecute, defend or participate in such action or proceeding by attorneys selected by the Mortgagee.

(c) All sums paid by the Mortgagee for the expense of any such action or proceeding described in this Section including any appellate proceeding in connection herewith (including without limitation, reasonable attorneys' fees and disbursements at trial and appellate level) shall be paid by the Company to the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the default rate provided in the Note (the "Default Rate"). Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(d) In the event the maturity of the principal amount of the Debt shall be accelerated by reason of a default under the Note, this Mortgage, or any other instrument given to secure the payments provided to be made pursuant to the Note, in addition to the costs and fees described above in Subsection (c), the Company shall pay to the Mortgagee, upon demand, together with the interest thereon at the Default Rate, the fees and costs incurred by the Mortgagee, following such acceleration, in obtaining an appraisal of the fair market value of the Mortgaged Property prepared by an appraiser, duly qualified under applicable law and governmental regulations to issue appraisals of real property to the Company in connection with the approval of loans so secured, and the fees and costs incurred by the Company in obtaining an Environmental Survey of the Mortgaged Property, as defined below in Subsection 1.24 (f). Upon reasonable notice to the Company, the Mortgagee, its officers, employees, agents and contractors, may enter the Mortgaged Property to conduct the Environmental Survey. Any such fees and costs paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

Section 1.8. Insurance Coverage. (a) The Company, until the Debt secured by this Mortgage shall be fully paid and satisfied, shall keep, as applicable, the Company, the Improvements and the Personal Property insured, by a company or companies and in form, amounts and with coverage and deductibles satisfactory to Mortgagee against:

(i) loss or damage by perils customarily included under standard "all risk" policies, and all other contingencies as may be required by the Mortgagee, which shall evidence, by endorsement, (i.e., a so-called "agreed amount" replacement cost endorsement insuring one hundred percent (100%) of the replacement cost of the Improvements) the agreement of the insurer to pay, upon the occurrence of an insured loss, a sum equal to the cost to repair or replace the lost or damaged

Improvements and the Personal Property which shall be damaged or destroyed by reason of an insured loss, with property of a like kind and quality, without deduction for depreciation and normal wear and tear;

(ii) the coverages provided by so called Commercial General Liability insurance, applicable to the Mortgaged Property, in such amounts as are usually carried by persons or entities owning properties similar to the Mortgaged Property wherein is being conducted the business then being conducted therein in the same general locality as that of the Mortgaged Property, but in any event for amounts not less than \$1,000,000.00 for each occurrence, for death, personal injury and property damage, and \$2,000,000.00, in the aggregate for covered occurrences, which amounts shall be increased, from time to time, to reflect what a reasonably prudent owner or lessee of buildings or improvements similar in type and locality to that of the Mortgaged Property would carry;

(iii) the coverages provided by all-risk builders' risk insurance with respect to the Mortgaged Property during any period in which there is any construction occurring with respect to the Improvements, in an amount no less than the full replacement cost of the Improvements which are the subject of the construction;

(iv) if the Mortgaged Property is now located in an area having special flood hazards or if such area hereafter shall be designated by the United States Government, or any agency thereof, as having special flood hazards, the coverages provided by a policy insuring against floods in an amount equal to the lesser of (A) the principal amount secured by this Mortgage or (B) the maximum amount available pursuant to federal law;

(v) insurance against such other hazards (including war damage insurance, if and when the same is available from the United States Government or any agency or subdivision thereof) as may be reasonably required by the Mortgagee from time to time and as are customarily insured against with respect to like properties; and

(vi) in addition, shall keep and maintain worker's compensation insurance to the full extent required by applicable law for all employees of the Company engaged in any work on or about the Mortgaged Property.

(b) All companies which shall provide the insurance required by this Mortgage shall have a rating of A-8 or better, in the edition of Bests Key Rating Guide current for the time when the insurance is given, and shall be qualified to do business in the State where the Mortgaged Property is located.

(c) At the time of the execution of this Mortgage and at least thirty (30) days prior to the expiration of each policy required to be provided by the Company pursuant to the provisions of this Section, the Company shall deliver to the Mortgagee the policy or policies or renewal policy or policies, as the case may be, with appropriate evidence of the payment of the premium therefor.

(d) The insurance policies required to be procured pursuant to this Mortgage shall:

(i) as to the insurance coverage required under subsection (a) (i) above, contain a standard New York non-contributory form of mortgagee endorsement satisfactory to the Mortgagee, naming the Mortgagee, its successors and assigns as their interests may appear, as "mortgagee insured", and as "loss payee", and providing that no act, omission or negligence of the Company, or its agents, servants or employees, or of any tenant under any lease for the whole or any part of the Mortgaged Property, which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance insofar as the Mortgagee is concerned;

(ii) as to all other coverage name the Agency and the Company and the Mortgagee, as named insureds, as their respective interests may appear; and

(iii) provide, to the extent obtainable, that such policies may not be canceled or amended or in any way limited in coverage or reduced in amount without at least thirty (30) days' prior written notice to the Mortgagee, that no claims thereunder shall be paid without at least ten (10) days prior written notice to the Mortgagee and that the insurance proceeds or awards may be adjusted only after obtaining the prior written consent of the Mortgagee.

(e) The Company, at its expense, will furnish to the Mortgagee, within ninety (90) days after demand (but not more frequently than once in each consecutive period of sixty (60) calendar months which period commences with the appraisal made in connection with this Mortgage) proof of the then full insurable value of the Improvements and the Personal Property, such proof to be by appraisals satisfactory in form and substance to the Mortgagee and prepared by an appraiser designated and paid for by the Company and approved by the Mortgagee. No failure or omission on the part of the Mortgagee to request any such appraisals or proof shall relieve the Company of any of its obligations under this Section.

(f) In the event that any one or more of the properties comprising any of the Improvements or the Personal Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, the Company shall promptly restore, replace, rebuild or alter the damaged or destroyed Improvements and Personal Property, in either case as nearly as possible to the condition the Improvements and Personal Property were in prior to such damage or destruction, without regard to the availability or adequacy of insurance proceeds but only if Mortgagee shall make the insurance proceeds obtained by it available to Company to pay for such work. If the damage be of such nature as to require the Company to construct a replacement for, or to alter the damaged or destroyed items in any material or substantial way, the Company shall, before commencing any such work, submit to the Mortgagee for the Mortgagee's approval, which shall not be unreasonably withheld or delayed, copies of the plans and specifications therefor to be prepared by an architect or engineer selected by the Company, subject to the approval of the Mortgagee, who shall then be licensed by the state in which the Mortgaged Property

is located, and who shall have been placed in charge of the restoration of the Improvements.

(g) Until the full payment of the Debt, the Mortgagee shall have and hold the insurance policies described in this Section as collateral and further security for the payment of the Debt. In default of the Company's compliance with this Section, (i) the Company hereby agrees to indemnify and hold the Mortgagee harmless against all damage, loss or liability resulting from all risks that would have been covered by such insurance to the extent of the benefit which would have been received by the Mortgagee had the insurance coverage required to be obtained under this Subsection been obtained and maintained by the Company as required hereunder and (ii) the Mortgagee or its successors or assigns may, but shall have no obligation to, place such insurance as described above, from time to time, in an amount in the aggregate not exceeding the amount of insurance required to be obtained under this Section, for the purpose aforesaid, and pay the premium or premiums therefor. In the event of such payment, the Company will pay to the Mortgagee, its successors or assigns such premium or premiums so paid by the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, title or interest in, to or on or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by this Mortgage and evidenced by the Note. In addition, in the event of a default of such payment by the Company or of the delivery of policies as provided above in this Section, the Debt shall, at the option of the Mortgagee, its successors or assigns, immediately become due and payable.

(h) The insurance required pursuant to this Section may be effected by a policy of blanket insurance which may cover property in addition to the Mortgaged Property, provided that the coverage shall be the same as if the Mortgaged Property were the sole property insured and the Company shall deliver to the Mortgagee a duplicate original copy or copies thereof or original insurance certificates therefor.

Section 1.9. Insurance Proceeds. (a) The Company shall give the Mortgagee prompt notice of any damage or destruction by fire or casualty occurring at the Mortgaged Property and the Company shall make such temporary repairs as are necessary for the protection of the Improvements. The proceeds of any insurance paid on account of any damage or destruction to the Mortgaged Property shall be paid over to the Mortgagee to be applied as hereinafter provided. In the event any such insurance proceeds shall be paid to the Company or by two-party check delivered to the Company, the Company shall forthwith pay such insurance proceeds to the Mortgagee, or endorse such two-party check and deliver it to Mortgagee (as the case may be), and the Company shall be personally liable for any such insurance proceeds not paid to the Mortgagee, notwithstanding any exculpation provision contained in this Mortgage or in any other Loan Document (as defined in Section 2.1.1(h) of this Mortgage).

(b) The Mortgagee shall have the option, in its sole discretion, to apply any insurance proceeds it may receive by reason of damage or destruction to the

Mortgaged Property toward payment of the Debt, or the same may be paid over either wholly or in part to the Company or to the heirs, successors or assigns of the Company for the repair of the Improvements and Personal Property or for the erection of new Improvements and the acquisition and installation of new Personal Property in their place, or for any other purpose or object satisfactory to the Mortgagee, and, if the Mortgagee shall receive and retain insurance money for such damage to the Mortgaged Property, the lien of this Mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money received and retained by the Mortgagee and applied toward payment of the obligations secured hereby.

Section 1.10. Condemnation. (a) The Company shall give the Mortgagee prompt notice of any condemnation or eminent domain proceedings affecting the Mortgaged Property.

(b) The Company will not enter into any agreement for a Taking of the Mortgaged Property, or any part thereof, without the prior written consent of the Mortgagee.

(c) In the event the whole or any part of the Mortgaged Property shall be the subject of a Taking, or shall be voluntarily conveyed in lieu thereof prior to the payment in full of the Debt, the Company shall pay to the Mortgagee, during the period from the date of a Taking (or conveyance in lieu thereof) to the payment in full of the Debt, the difference, if any, between the interest payable thereon at the rate stipulated in the Note in respect of the Debt and the interest actually paid to the Company by the entity exercising the right of eminent domain or to whom the Mortgaged Property was conveyed in lieu of the exercise of such power.

(d) All Awards are hereby assigned to the Mortgagee. The Mortgagee and its legal representatives, successors and assigns (at its or their option) are hereby irrevocably authorized and empowered to collect and receive the Awards from the authorities making the same, to give proper receipts and acquittances therefor in any of their names or in the name of the Company, and to apply the same toward the payment of the Debt, the Note or this Mortgage, in such priority and proportions as the Mortgagee in its discretion shall deem proper, although the Debt secured by this Mortgage then may not be due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of any Awards, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive any Awards, or a portion thereof sufficient to pay the Debt, whichever is less.

(e) Notwithstanding any Taking, the Company shall continue to pay the Debt at the time and in the manner provided for in the Note and in this Mortgage and the Debt shall not be reduced until any Awards shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Company shall file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Company, further, hereby irrevocably appoints the Mortgagee and its officers and employees the attorney-

in-fact of the Company, coupled with an interest, to file, prosecute, settle, and compromise its claims for any Awards, to receive any Awards and to endorse any instruments with respect thereto. The Company further agrees that although it is hereby expressly agreed that the same shall not be necessary in any event, the Company shall, upon demand, of the Mortgagee, make, execute and deliver to it any and all assignments and other instruments sufficient for the purpose of assigning any Awards to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

Section 1.11. Estoppel Certificates.

(a) The Company, within twenty (20) days of the receipt of a request from the Mortgagee, but not more frequently than twice in any twelve month period, will furnish a written statement, duly acknowledged, of the amount due on the Debt and whether any offsets and defenses exist against the Debt.

(b) The Mortgagee, within twenty (20) days of the receipt of a request from the Company, but not more frequently than twice in any twelve month period, will furnish to the Company a statement setting forth the principal balance then outstanding on the Note, accrued interest thereon to the date of the statement and the date to which such interest has been paid.

Section 1.12. Financial Statements. (a) The Company agrees to furnish the Mortgagee, the financial statements required pursuant to the provisions of the Note.

(b) Promptly after a request therefor, the Company shall furnish to the Mortgagee such other financial data or information as the Mortgagee may reasonably request from time to time.

(c) At the same time as it delivers the financial statements required under the provisions of Subsections (a) and (b) above, the Company shall furnish to the Mortgagee a certificate signed by the Company, to the effect that no default under the Note, an Event of Default under this Mortgage nor a default in or under any other agreement to which the Company is a party or by which it is bound, or by which any of its properties or assets may be affected, and no event which, with the giving of notice or the lapse of time, or both, would severally constitute such an event of default, has occurred, and specifying in reasonable detail, the exceptions, if any, to such statement.

(d) The Mortgagee shall have the right to inspect the books and records of the Company at reasonable times.

Section 1.13. Restrictions on Sales and Transfers. The Company shall not, without the consent in writing of the Mortgagee, voluntarily change the use of the Mortgaged Property or sell, transfer, or convey its interest in the Mortgaged Property or any part thereof in or by any one or series of transactions or permit the Mortgaged Property or any part thereof or any interest therein to be sold, transferred, or conveyed, except that the Agency may transfer its interest in accordance with the IDA Lease Agreement. For the purposes of this Section a "sale" shall include: (I) if the Company is

a corporation, a majority of its voting shares of stock shall be sold, transferred or pledged, or the majority interest therein shall be transferred by the issuance of new shares or otherwise, in any one or series of transactions; or, (II) if the Company is a partnership, limited liability company, joint venture or similar entity, the majority of the interest or interests in the Company be sold, transferred or pledged or the majority of the interests therein be transferred or diluted by the admission of new partners, members or otherwise, in any one or series of transactions. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to further or successive transactions.

Section 1.14. Restrictions on Leasing and Further Encumbrances. The Company shall not, without first obtaining the prior consent of the Mortgagee in each such instance:

(a) mortgage, convey or grant a lien subordinate to this Mortgage on the Mortgaged Property, or on any or all of the Land, Improvements, Personal Property or Appurtenances of which it is comprised except to the Mortgagee secured by a subordinate mortgage lien on the Mortgaged Property in an amount not to exceed \$1,945,000.00 (the "Subordinate Mortgage") provided the Subordinate Mortgage shall be and remain subject and subordinate in all respects to the lien of this Mortgage and to any modifications, extensions or renewals thereof. Any default by the Company under any of the terms of the Subordinate Mortgage shall be deemed a default under the terms of this Mortgage;

(b) collect or pay any Rents for a period of more than one month in advance other than the security deposited in connection with a Lease;

(c) further pledge, transfer, mortgage or otherwise encumber or assign the Leases and Rents except to the Mortgagee;

(d) waive, excuse, condone, discount, set-off, compromise, cancel, terminate or in any manner release or discharge, any tenant under any Lease, of and from any obligations, covenants and agreements by said tenant to be kept, observed and performed, including the obligation to pay rent thereunder, in the manner and at the place and time specified therein (reference is made to Section 291-f of the Real Property Law of the State of New York to establish for the Mortgagee the rights and benefits provided therein);

(e) cancel, terminate or consent to any surrender of any Lease, except as may be provided in any such Lease, or commence an action of ejectment or any summary proceedings for dispossession of the tenant under any Lease or execute any right to recapture provided in any Lease;

(f) execute or permit to exist any Lease (other than the IDA Company Lease, the IDA Lease Agreement and the IDA Sublease Agreement) except for occupancy by the lessee under and pursuant to a written lease in form and substance satisfactory to the Mortgagee and with a lessee satisfactory to Mortgagee;

(g) modify, amend, extend or renew any Lease, or permit the lessee under any Lease to assign the tenancy thereunder unless such lessee has such right of assignment under its lease without the necessity of obtaining Company's consent thereto (reference is made to Section 291-f of the Real Property Law of the State of New York to establish for the Mortgagee the rights and benefits provided therein);

(h) relocate any tenant under any Lease, nor consent to any modification of the express purposes for which such space has been leased, nor consent to any subletting of all or any portion of the Mortgaged Property, or to an assignment of any Lease or a further subletting of any sublease, except as may be provided in any Lease;

(i) consent or agree to accept a subordination of any Lease to any mortgage or other encumbrance (other than this Mortgage) now or hereafter affecting the Mortgaged Property;

(j) create or permit to exist any easement or restrictive covenant affecting the Mortgaged Property.

Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions.

Section 1.15. Liens. The Company shall discharge of record, by the filing of a bond pursuant to court order or otherwise, any mechanic's or materialmen's lien or a judgment lien filed against the Mortgaged Property, within thirty (30) days after the filing thereof.

Section 1.16. No Recorded Restrictions Based on Race, Etc. The Company shall not execute or file or record any instrument which imposes a restriction upon the sale or occupancy of the Mortgaged Property on the basis of race, sex, religion, national origin, color or creed. Upon any violation of this undertaking, the Mortgagee may, at its option, declare the unpaid balance of the Debt to be immediately due and payable.

Section 1.17. Maintenance of Existence. The Company will, if other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation, partnership, limited liability company, trust or other entity under the laws of the jurisdiction of its formation or incorporation and will comply with all regulations, rules, ordinances, laws, statutes, orders and decrees of any governmental authority applicable to it or to the Mortgaged Property, or any part thereof. The Company represents that, as may be the case, all of its general partners, members, and, to the extent required by law and its organizational documents, its members, if any, have authorized the execution of this Mortgage and this Mortgage is made in the regular and ordinary course of business.

Section 1.18. Usury. Nothing herein or in the Note, and none of the terms, covenants, conditions or obligations hereof or thereof shall impose or shall be deemed to impose upon the Company an obligation to make any payment, pay any interest or late charges in excess of, or do any act or take any action, or forbear from doing any act or

taking any action, in violation of any statute, rule, ordinance or regulation in effect and effective as of the date of such payment, act, action or forbearance. In no event shall the Company be required to make any such illegal or impermissible payment or to take or do any such illegal or impermissible act or forbear from so doing or so taking nor shall any such failure so to pay or act or such forbearance be deemed a default hereunder. If the provisions of this Mortgage would at any time otherwise require payment by the Company to the Mortgagee of an amount of interest in excess of the maximum amount then permitted by law, the interest payments to the Mortgagee shall be reduced to the extent necessary so that the Mortgagee shall not receive interest in excess of such maximum amount. To the extent that, pursuant to the foregoing sentence, the Mortgagee shall receive interest payments hereunder in an amount less than the amount otherwise provided, such deficit (the "Interest Deficit") will accumulate and will be carried forward (without interest) until the Debt is paid in full. Interest otherwise payable to the Mortgagee hereunder for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing the Mortgagee to receive interest in excess of the maximum amount then permitted by law. The terms, covenants, conditions and obligations hereof or of the Note requiring any such illegal or impermissible payment, act, action or forbearance on the part of the Company to be made or taken are deemed amended, modified or altered in such a manner as to bring all and each of them into conformity with the applicable statutes, rules, ordinances or regulations in respect of the Company and the Company hereby covenants and agrees to abide by, conform to and comply with any and all such terms, covenants, conditions and obligations as so amended, modified or altered.

Section 1.19. Payment of Charges; Advances and Disbursements; Costs of Administration and Enforcement.

(a) Upon default of the Agency and/or the Company in the performance of any term, covenant, condition or obligation by (i) the Agency and/or the Company to be performed under this Mortgage, (ii) the Company to be performed under the Note, or (iii) the Company to pay, when due, any of the sums which the Company is required to pay as provided above in Section 1.4, the Mortgagee may, but shall not be obligated to, cure such default, or make such payment in the name and on behalf of the Company. All sums advanced and all expenses incurred at any time by the Mortgagee pursuant to this Section 1.19 or as otherwise provided under the terms, covenants, conditions or obligations of this Mortgage or under applicable law shall be reimbursed by the Company to the Mortgagee, upon demand, and shall bear interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(b) The Company shall bear and pay all direct and incidental expenses (including, without limitation, attorneys' fees and disbursements for legal services of every kind at trial and appellate level) relating to the administration of this Mortgage and the other Loan Documents (as defined in Section 2.1.1(h) of this Mortgage) including,

without limitation, the performance of new appraisals of the Mortgaged Property necessitated by (i) the Mortgagee's credit policy guidelines applicable to mortgage loans made by Mortgagee or (ii) any regulatory requirements imposed upon Mortgagee by any governmental or quasi-governmental entity having jurisdiction over Mortgagee. All such expenses paid by the Mortgagee shall be reimbursed by the Company to the Mortgagee, upon demand, and shall bear interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

Section 1.20. Assignment of Leases and Agreements.

(a) Pursuant to Section 291-f of the Real Property Law of the State of New York, neither the Company nor any tenant under any Lease shall have the right or power, as against the Mortgagee without its consent, to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases now or hereafter in effect (other than the Excluded Property, except for the right to payments to be made to the Mortgagee pursuant to Section 5(d) of the IDA Sublease Agreement) in respect of all or any part of the Mortgaged Property or the Improvements or to accept or make, as the case may be, prepayments of installments of rent to become due thereunder. The Rents of the Mortgaged Property are hereby transferred and assigned to the Mortgagee, and the Mortgagee shall have the right to enter upon the Mortgaged Property for the purpose of collecting the same and to let and operate the Mortgaged Property or any part thereof and to apply the Rents, either in whole or in part, as the Mortgagee elects, to the payment of all charges and expenses of the Mortgaged Property or in reduction of any part of the Debt or other sums due or to become due under the Note or this Mortgage. This assignment and grant shall continue in effect until the Debt and all other obligations secured by this Mortgage are paid in full. The Mortgagee hereby waives the right to enter upon the Mortgaged Property for the purpose of collecting the Rents and the Company shall have a license to collect and receive the Rents until an Event of Default hereunder, but such license of the Company may be revoked by the Mortgagee upon any such Event of Default. From and after the occurrence of an Event of Default hereunder all Rents collected or received by the Company shall be accepted and held for Mortgagee in trust and shall not be commingled with the funds and property of Company, but shall be promptly paid over to Mortgagee. The Mortgagee may apply all Rents or any part thereof so received hereunder, after the payment of all of its expenses including costs and attorneys' fees, to the Debt in such manner as it elects or at its option the entire amount or any part thereof so received may be released to the Company.

(b) All future Leases entered into after the execution of this Mortgage for the whole or any part of the Mortgaged Property shall contain the following provision (or a provision substantially the same):

"Tenant/Lessee hereby agrees not to look to the mortgagee of (i) the fee interest in the premises demised by this Lease or (ii) the lease to which this Lease is

subordinate, in such mortgagee's capacity as mortgagee, mortgagee in possession, successor in title to such interest, or otherwise, for accountability for any security deposit required by the landlord hereunder, unless said sums have actually been received by said mortgagee as security for the tenant's performance of this Lease."

Section 1.21. Inconsistency With Related Laws. Nothing contained in this Mortgage shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 or 271, 272 and 291 (f), of the Real Property Law of the State of New York, as the same may be modified or renumbered, from time to time, or any other similar, applicable law of the state in which the Mortgaged Property is located, but all terms, covenants, conditions or obligations herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages, except that the terms, covenants, conditions and obligations of this Mortgage shall supersede the provisions of subdivision 4 of said Section 254.

Section 1.22. Right of Inspection. The Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

Section 1.23. Late Charges. In the event that any payment cannot be debited on its debit date, a "late charge" of five cents (\$.05) for each dollar so overdue may be charged to the Company by the Mortgagee for the purpose of defraying the expenses incident to handling such delinquent payment.

Section 1.24. Environmental Matters. (a) For purposes of this Mortgage, the following terms shall have the following meanings:

"Environmental Complaint" - shall mean any judgment, lien, order, complaint, notice, citation, action, proceeding or investigation pending before any Governmental Authority, including, without limitation, any environmental regulatory body, with respect to or threatened against or affecting the Company or relating to its business, assets, property or facilities or the Mortgaged Property, in connection with any Hazardous Material or any Hazardous Discharge or any Environmental Law.

"Environmental Laws" - shall mean any applicable federal, state or local laws, rules, regulations, resolutions, ordinances, directives or orders (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of such laws, rules, regulations, resolutions, ordinances, directives or orders or any other applicable determination regarding land, water, air, health, safety or environment including, for example but not limited to, the Federal Statutes and the State Statute.

"Governmental Authority" - shall mean any federal, state, or local government, governing body, agency, court, tribunal, authority, subdivision, bureau or other recognized body having jurisdiction to enact, promulgate, interpret, enforce, review or repeal any Environmental Law.

"Hazardous Discharge" - shall mean any release of a Hazardous Material caused by the seeping, spilling, leaking, pumping, pouring, emitting, using, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Material into the environment, and any liability for the costs of any cleanup or other remedial action.

"Hazardous Materials" - shall mean, without limitation, flammables, explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls or related or similar materials, petroleum products, explosives, radioactive materials, or any other hazardous or toxic or harmful materials, wastes and substances or any other chemical, material, substance or element which is hereinafter defined, determined, identified, prohibited, limited or regulated by the Environmental Laws, or any other chemical, material, substance or element which is known to be harmful to the health or safety of occupants of property or which is hereinafter defined as a hazardous or toxic substance by any Federal, State, or local law, ordinance, rule or regulation, including, but not limited to the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and/or the regulations promulgated in relation thereto, all as the same may be amended from time to time (collectively, the "Federal Statutes"); the New York State Environmental Conservation Law Article 27, Title 13 (the "State Statute"), and the regulations promulgated in relation thereto, all as the same may be amended from time to time.

(b) The Company covenants, represents and warrants that (except as set forth in the site assessment of the Mortgaged Property prepared for the benefit of the Mortgagee):

(i) to the best of the Company's knowledge, after due inquiry and investigation, the Mortgaged Property has never been used by previous owners, operators or occupants or the Company to generate, manufacture, refine, transport, treat, store, handle or dispose, transfer, produce, process or in any manner deal with any Hazardous Material,

(ii) the Company has not received a summons, citation, directive, letter or other communication, written or oral, from any Government Authority concerning any intentional or unintentional action or omission on the Company's part which had resulted in the violation of any Environmental Laws, as the same may relate to the Mortgaged Property,

(iii) no lien has been attached to any revenues or any real or personal property owned by the Company and located in the state where the Mortgaged Property is located, including, but not limited to the Mortgaged Property, for "Damages" and/or "Cleanup and Removal Costs", as such terms are hereinafter defined in any Environmental Law, or arising from an intentional or unintentional act or omission in

violation thereof by the Company or by any previous owner and/or operator of such real or personal property, including, but not limited to the Mortgaged Property,

(iv) the Company has duly complied, and shall continue to comply, with the provisions of the Environmental Laws governing it, its business, assets, property, facilities and the Mortgaged Property, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws,

(v) the Company shall not, and shall not permit any of its officers, partners, members, employees, agents, contractors, licensees, tenants, occupants or others to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process or in any manner deal with any Hazardous Material on the Mortgaged Property except in accordance with all Environmental Laws applicable thereto,

(vi) there is not now outstanding any Environmental Complaint issued by any Governmental Authority to the Company or relating to the Company's business, assets, property, and facilities or the Mortgaged Property under any Environmental Law, and there is not now existing any condition which, if known by the proper authorities, could result in any Environmental Complaint, and that

(vii) the Company has, and will continue to have, all necessary licenses, certificates and permits under the Environmental Laws relating to the Company and its facilities, property, assets, and business, and the Mortgaged Property and the foregoing are in compliance with all Environmental Laws.

(c) If the Company receives any notice of (i) the presence of Hazardous Materials on the Mortgaged Property, (ii) any violation of or noncompliance with any Environmental Law, (iii) the occurrence of a Hazardous Discharge on or about any asset, business, facility or property of the Company or caused by the Company, or (iv) any Environmental Complaint affecting the Company or the Mortgaged Property or the Company's operations, assets, business, facilities or properties, then the Company will give written notice of the foregoing to the Mortgagee within ten (10) days of receipt thereof and shall (1) promptly comply with the Environmental Laws and all other laws, regulations, resolutions and ordinances to correct, contain, cleanup, remove, resolve or minimize the impact of such Hazardous Materials, Environmental Discharge or Environmental Complaint and (2) shall at the Mortgagee's option, (i) post a bond from a surety or (ii) cause a lending institution to issue a letter of credit for the benefit of the Mortgagee and any Governmental Authority requiring the same; the surety or the lending institution, and the form, the substance and the amount of the bond or letter of credit to be satisfactory to the Mortgagee and satisfactory to the applicable Governmental Authority, or shall give to the Mortgagee and the applicable Governmental Authority such other security satisfactory in form, substance and amount to both the Mortgagee and the applicable Governmental Authority to assure that the Company does correct, contain, cleanup, remove, resolve or minimize the impact of such Hazardous Materials, Environmental Discharge or Environmental Complaint.

(d) Notwithstanding the foregoing provisions of Subsection (c) above, the Company shall have the right (i) to contest (a "Contest") by appropriate

administrative, legal or equitable proceedings, diligently prosecuted, in good faith, in its name or in the name of the Mortgagee if required by law, at the sole cost and expense of the Company, the validity or applicability of any Environmental Laws, or any Environmental Complaint against the Mortgaged Property or the Company, and (ii) to postpone compliance with the Environmental Laws until the final determination of such Contest without violating the provisions of this Mortgage provided, however:

(i) enforcement proceedings with respect to any and all Environmental Laws are deferred or stayed during the pendency of the Contest,

(ii) the Mortgagee shall not be subject to any civil or criminal or other penalties or liabilities, costs or expenses by reason of any such Contest or postponement in complying with the Environmental Laws,

(iii) the Company, at Mortgagee's request, shall (i) post a bond, cause the issuance of a letter of credit or provide such other security required under the provisions of Subsection (c) above,

(iv) the lien of this Mortgage shall not be impaired in the sole judgment of the Mortgagee and no default shall exist under this Mortgage,

(v) any Contest shall be instituted promptly after Company receives notice of the existence of any Environmental Law which imposes an obligation upon the Company or the Mortgagee or the Company receives notice of any Environmental Complaint which asserts any obligation or liability affecting the Company, the Mortgagee or all or any portion of the Mortgaged Property, and such Contest shall at all times be diligently prosecuted until a final disposition is obtained that negates such assertion of obligation or liability, and

(vi) the Company shall notify the Mortgagee in writing within ten (10) days after commencement of a Contest, and shall give the Mortgagee a monthly report, during the period of a Contest, on the Company's progress with respect thereto, and shall promptly give the Mortgagee such other information with respect thereto as the Mortgagee shall reasonably request.

(vii) The Company will, at the expense of the Company, execute and deliver any documents jurisdictionally necessary or proper to prosecute such Contest proceedings. The Mortgagee, at the cost and expense of the Company, shall have the right (but not the obligation) to join in any Contest.

(e) Without limitation of the Mortgagee's rights under this Mortgage or applicable law, the Mortgagee shall have the right, but not the obligation, to exercise any of its rights to cure as provided in this Mortgage or to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to correct, contain, cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Material, Hazardous Discharge or Environmental Complaint upon its receipt of any notice from any person or entity or Governmental Authority, informing the Mortgagee of such Hazardous Material, Hazardous Discharge or Environmental

Complaint, which if true, could adversely affect the Company or any part of the Mortgaged Property or which, in the sole opinion of the Mortgagee, could adversely affect its collateral security under this Mortgage. All reasonable costs and expenses incurred and paid by the Mortgagee in the exercise of any such rights shall be paid by the Company to the Mortgagee upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee and the interest thereon shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(f) Upon reasonable notice to the Company, the Mortgagee, its officers, employees, agents and contractors, may enter the Mortgaged Property to inspect it and to conduct, complete and take such tests, samples, analyses and other processes (an "Environmental Survey") as the Mortgagee shall require to determine the Company's compliance with this Subsection and the Environmental Laws. The costs, expenses and fees of the Mortgagee of such entry, inspection, tests, samples, analyses and processes shall be paid and reimbursed by the Company to the Mortgagee, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Any such sum paid by the Mortgagee, with interest thereon at the rate provided to be paid on the indebtedness secured by this Mortgage, shall be a lien on the Mortgaged Property prior to any claim, lien, right, title or interest in, to or on the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(g) Upon written request, the Company shall provide to the Mortgagee the following information pertaining to all operations conducted in or on the Mortgaged Property:

(i) copies of all licenses, certificates and permits under the Environmental Laws;

(ii) material safety data sheets and maps, diagrams and site plans showing the location of all storage areas and storage tanks for all Hazardous Materials or other chemicals in, used at, manufactured at, brought to or stored at the Mortgaged Property;

(iii) copies of all materials filed with any Governmental Authority;

(iv) a description of the operations and processes of the Company; and

(v) any other information which the Mortgagee may reasonably require.

(h) The Company covenants and agrees, at its sole cost and expense, to indemnify, protect, and save the Mortgagee harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, costs and reasonable attorneys' fees and disbursements, generally, and at trial and appellate level and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the Mortgagee and arising from or out of:

(i) the Company's failure to perform and comply with this Section, or

(ii) any Hazardous Material, any Hazardous Discharge, any Environmental Complaint, or any Environmental Law applicable to the Company, its operations, business, assets, property or facilities, or the Mortgaged Property, or

(iii) the imposition of any lien against the Mortgaged Property to the extent of damages caused by, or the extent of the recovery of any costs for the cleanup, release or threatened release of any Hazardous Material; or

(iv) any action against the Company under this indemnity or the assertion by the Indemnitor of any defense to its obligations hereunder.

Section 1.25. Trust Funds. In compliance with Section 13 of the New York State Lien Law, the Company will receive the advances secured by this Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvement (as defined in Section 2 of the Lien Law of the State of New York, whether or not the Mortgaged Property is located in that State), and the Company will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

Section 1.26. Indemnity. That the Company hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including reasonable attorneys' fees) paid, incurred or suffered by or asserted against the Mortgagee at any time for, with respect to, or as a direct result of any fraud or intentional misrepresentation by the Company or any guarantor of the Debt, or the misapplication of any proceeds, or any other law or regulation or from the intentional waste of the Mortgaged Property.

ARTICLE II

DEFAULTS AND REMEDIES

Section 2.1.1. Events of Default-Optional Acceleration. The Debt shall become due, at the option of the Mortgagee, upon the occurrence of any of the following events, which event shall be an "Event of Default":

(a) after default in the payment of any installment of principal or interest as provided in the Note,

(b) after default in the payment when due and payable of any other sum of money required to be paid or expended under this Mortgage, the Note, or any other Loan Document (as hereinafter defined),

(c) if any warranty, representation or certification made herein or in any financial statement furnished pursuant hereto or in connection with the indebtedness evidenced by the Note and secured by this Mortgage (the "Loan") shall be materially false,

(d) after default in keeping the Mortgaged Property insured as herein provided,

(e) after default either in assigning and delivering the policies insuring the Improvements or the Personal Property against loss as hereinafter provided for or in reimbursing the Mortgagee for premiums paid on such insurance, as hereinabove provided for,

(f) after default after ten (10) days prior notice in furnishing a statement of the amount due on this Mortgage and whether any offsets or defenses exist against the Debt, as hereinabove provided for,

(g) if the Company intentionally does or permits to be done anything that may in any way impair the lien of this Mortgage or impair the value of the Mortgaged Property or any of the Improvements or weaken or diminish the security intended to be given under and by virtue of this Mortgage,

(h) upon the failure of the Company to perform or comply with any other term, covenant, condition or obligation of this Mortgage or of the Note or of any term, covenant, condition or obligation of any other agreement or instrument executed by the Company which secures the indebtedness evidenced by the Note (collectively, the "Loan Documents"), or of any other agreement between the Company and the Mortgagee, in accordance with the terms hereof and thereof,

(i) a default under, or any attempted withdrawal, cancellation or disclaimer of liability under, any guarantee which guarantees payment of the Debt or any part thereof, or under any agreement giving security for any such guarantee;

(j) the failure of (i) the Company, (ii) if Company is a corporation, any shareholder in Company, (iii) if Company is a partnership, any general partner in Company or any shareholder or partner in such general partner, (iv) if the Company is a limited liability company, any member, (v) any guarantor of the Debt or any part thereof or (vi) any entity directly or indirectly controlled by any of the parties covered by (i) through (vi) above, to perform or observe any term, covenant, condition or obligation of any bond, note, loan agreement, guarantee, or any other instrument or agreement in

connection with the borrowing of money or the obtaining of advances or credit, or of any instrument given to secure the same, to which such party and Mortgagee or its affiliates are parties,

(k) if a default occurs under any mortgage which is prior, equal or subordinate to the lien of this Mortgage or the mortgagee under any such prior, equal or subordinate mortgage commences a foreclosure action in connection with said mortgage;

(l) the further mortgage, pledge or encumbrance by the Company of the Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee except as provided in Section 1.14(a);

(m) the further assignment or encumbrance by the Company of the Rents arising from the Mortgaged Property, or any part thereof, without the prior written consent of the Mortgagee in each instance except as provided in Section 1.14(a);

(n) if the Company leases all or any part of the Mortgaged Property in violation of Section 1.14 hereof, or effects any changes in any lease in violation of Section 1.14 hereof;

(o) if the Mortgaged Property ceases to be leased and managed by the current member of the Company or such other person or entity as may be approved by the Mortgagee in writing pursuant to a written agreement satisfactory to the Mortgagee in form and substance;

(p) any default, for thirty (30) days after notice and demand, in the payment of any taxes of any kind and nature, assessments, water and sewer charges, rents and rates, and other governmental or municipal charges, fines or impositions relating to the Mortgaged Property or any part thereof;

(q) any failure for thirty (30) days after notice and demand to exhibit to the Mortgagee receipted bills for any taxes of any kind and nature, assessments, water and sewer charges, rents and rates, and other governmental or municipal charges, fines or impositions herein referred to;

(r) if the Mortgagee shall give the written notice specified above in Section 1.4(c) and payment is not made within the timeframe provided therein;

(s) if the Company shall terminate or modify any of the IDA Company Lease, the IDA Lease Agreement or the IDA Sublease Agreement, without the Mortgagee's consent, or if any of the IDA Company Lease, the IDA Lease Agreement or the IDA Sublease Agreement shall for any reason cease to be in full force and effect.

Section 2.1.2. Events of Default-Automatic Acceleration. The Debt shall forthwith and automatically become due, upon the occurrence of any of the following events which event shall also be an "Event of Default":

if the Company or any guarantor of the Debt or any part thereof shall:

(i) call a meeting of or make an assignment for the benefit of creditors,

(ii) file a petition in bankruptcy, under Title 11 of the U.S. Code, as amended (the "Bankruptcy Code"), or be adjudicated insolvent or bankrupt, file a petition in bankruptcy, or be adjudicated insolvent or bankrupt,

(iii) be the subject of an order for relief under the Bankruptcy Code, or petition or apply to any tribunal for the appointment of a receiver or a trustee for it or a substantial part of its assets,

(iv) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, whether now or hereafter in effect,

(v) have filed against it a petition, application or proceeding described above in subdivision (iv) or such a petition, application or proceeding shall have been commenced against it, which remains undismissed or unstayed for a period of thirty (30) days or more,

(vi) by any act or omission indicate its consent to, approval of or acquiescence in any petition, application or proceeding described above in subdivision (iv) or in the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its property,

(vii) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more,

(viii) conceal, remove or permit to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them,

(ix) make or suffer a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law,

(x) make any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid,

(xi) shall suffer or permit, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof, or

(xii) generally not pay its debts as such debts become due.

Section 2.2. Remedies. (a) Upon the occurrence of any Event of Default, the Mortgagee may, in addition to any rights or remedies available to it hereunder or at law, take such action as it deems advisable to protect and enforce its rights against the

Company and in and to the Mortgaged Property (subject to Section 3.11 hereof), including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(i) declare the entire unpaid Debt to be immediately due and payable;

(ii) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Agency and the Company and its agents and servants therefrom, and thereupon the Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat, (B) complete any construction on the Mortgaged Property in such manner and form as the Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property, (d) exercise all rights and powers of the Company with respect to the Mortgaged Property, whether in the name of the Company or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof, and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as compensation for the services of the Mortgagee, its agents and employees;

(iii) institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels, and in such order as the Mortgagee shall determine;

(iv) with or without entry and, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the lien of this Mortgage continuing unimpaired and without loss of priority so as to secure the balance of the Debt not then due;

(v) sell the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Company therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property;

(vi) institute an action, suit or proceeding in equity for the specific performance of any covenants, conditions or agreements contained herein or in the Note;

(vii) recover judgment on the Note before, during, after or in lieu of any proceedings for the enforcement of this Mortgage;

(viii) apply for the appointment of a custodian, trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Company, or of any person, party or entity liable for the payment of the Debt;

(ix) pursue such other remedies as the Mortgagee may have under one or more of the other Loan Documents and/or any other collateral given as security for the Loan;

(x) pursue such remedies as the Mortgagee may have under applicable law; and

(xi) foreclose this Mortgage by power of sale or any other non-judicial means permitted by the laws of the state in which the Mortgaged Property is located.

(b) The purchase money proceeds or avails of any sale made under or by virtue of this Section 2.2, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Section 2.2 or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of any such sale, including, without limitation, compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings, including, without limitation, the costs and legal expenses of the Mortgagee in foreclosing or otherwise enforcing this Mortgage, wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the Default Rate, and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest with interest on the unpaid principal at the Default Rate from and after the happening of any Event of Default described above in Section 2.1 until the same is paid.

Third: To the payment of any other sums required to be paid by the Company pursuant to any provision of this Mortgage, the Note and all other Loan Documents.

Fourth: To the payment of the surplus, if any, to whosoever may be lawfully entitled to receive the same.

The Mortgagee and any receiver or custodian of the Mortgaged Property or any part thereof shall be liable to account for only those rents, issues and profits actually received by it.

(c) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Section 2.2, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of the Company (coupled with an interest), in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons or entities with like power, the Company hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Company, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for such purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 2.2, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Company in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Company and against any and all persons or entities claiming or who may claim the same, or any part thereof, either from, through or under the Company.

(e) Upon any sale made under or by virtue of this Section 2.2 (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may take settlement for the purchase price by crediting upon the Debt of the Company secured by this Mortgage the net sale price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

(f) The obligation of this Mortgage and of the Note shall continue until the Debt is paid in full notwithstanding any action or actions or partial foreclosure which may be brought to recover any amount or amounts for installments of principal, interest, taxes, assessments, water and sewer charges, rents and rates or insurance or other sums or charges due and payable under the provisions of this Mortgage.

(g) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Company shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, power or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before, and notwithstanding any statutory rate of interest applicable with respect to judgments, after the entering or execution of any judgment, the Debt shall bear interest at the rate or rates payable under the Note and this Mortgage until the Debt shall have been paid in full.

(h) In the event of a foreclosure of this Mortgage or the succession by the Mortgagee to the interests of the Company hereunder, the purchaser of the Mortgaged Property or such successor shall succeed to all rights of the Company, including any right to proceeds of insurance and to unearned premiums, and in and to all policies or certificates of insurance assigned and delivered to the Mortgagee pursuant to this Mortgage.

(i) During such time that the Company shall be in default under this Mortgage, or under the Note, the Mortgagee, in the event that the Company shall not file a protest against any proposed assessed valuation of the Mortgaged Property at least fifteen (15) days prior to the last date on which such protest may be legally filed, or having filed such protest and the same having been denied, shall not have commenced a proceeding for the reduction of said assessed valuation at least fifteen (15) days prior to the last date of which such proceedings may be legally commenced, the Mortgagee may, but shall have no obligation to, file such protest or commence and prosecute such proceeding, in its own name or in the name of the Company, and the Company agrees to cooperate fully, in good faith, with the Mortgagee in the conduct of any such proceeding. All expenses of any such filing by the Mortgagee or its commencement of any such proceeding, including, but limited to, reasonable counsel fees, shall be borne by the Company, and if paid by the Mortgagee shall be reimbursed by the Company to the Mortgagee, its successors or assigns, upon demand, together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. All expenses incurred by the Mortgagee, as described above in this Subsection, and the interest thereon, shall be a lien on the Mortgaged Property prior to any claim, lien, title or interest in, to or on or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by this Mortgage and evidenced by the Note.

(j) THE COMPANY HEREBY WAIVES THE RIGHT TO TRIAL BY JURY, THE RIGHT TO CLAIM ANY OFFSET AND THE RIGHT TO ASSERT A COUNTERCLAIM IN ANY ACTION OR PROCEEDING BROUGHT BY THE MORTGAGEE TO ENFORCE ANY OF ITS RIGHTS UNDER THE NOTE OR UNDER THIS MORTGAGE.

(k) Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims and defenses of any nature whatsoever which the Company may have against any assignor of this Mortgage and the Note and no such

offset, counterclaim or defense shall be interposed or asserted by the Company in any action or proceeding brought by any such assignee upon this Mortgage and/or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Company.

(l) The Company shall not be relieved of the Company's obligation to pay the Debt at the time and in the manner provided for in the Note and this Mortgage by reason of (i) failure of the Mortgagee to comply with any request of the Company or any guarantor of the payment of the Note and/or of this Mortgage to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or of any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or the release of any individual or entity guaranteeing the payment of the Note and/or of this Mortgage, or (iii) the extension or modification of this Mortgage or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Note and/or of this Mortgage or any portion thereof, without first having obtained the consent of the Company, and in the last event, the Company shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended or modified, unless expressly released and discharged by the Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, the Mortgagee may release any person or entity at any time liable for the payment of the Debt or any portion thereof or any individual or entity guaranteeing the payment of the Note and/or of this Mortgage or any part of the security held for the Debt or with respect to any guarantee, and may extend the time of payment or otherwise modify any of the terms, covenants, conditions or obligations of the Note and/or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title and interest. The Mortgagee may resort for the payment of the Debt to any other security or guarantee held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law or equity.

(m) The Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right to the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Company existing at the time such earlier action was commenced.

(n) The Mortgagee shall have the right to receive and accept partial payment of any sum or sums which constitute a part of the Debt or the interest accrued thereon and such receipt and acceptance by the Mortgagee shall not be deemed a waiver or modification of any default or defaults by the Company existing at such time.

(o) All remedies provided in this Mortgage are distinct from and cumulative to any other right or remedy under this Mortgage, the Note, any guarantee of the payment of the Note and/or of this Mortgage or any other agreement between, among others, if any, the Company and the Mortgagee executed simultaneously or in connection herewith, or afforded by law or equity, and may be exercised concurrently, independently or successively. Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

(p) Any forbearance by the Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the Mortgagee or other corrective or security protecting measures by the Mortgagee shall not be a waiver of the Mortgagee's right to accelerate the maturity of the Debt.

(q) In any action or proceeding to foreclose this Mortgage, or to recover or collect the Debt, the provisions of law respecting the recovery of costs, disbursements and allowances shall also be applicable.

Section 2.3. Interest After Default. If any payment due hereunder or under the Note is not paid when due, whether on any stated due date, any accelerated due date or any other date or at any other time specified under any of the terms, covenants, conditions or obligations hereof or thereof, then and in such event, the Company shall pay interest on the entire outstanding and unpaid principal balance of the Debt, from and after the date on which such amount first became due, at the Default Rate and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to the Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. All accrued but unpaid interest shall be secured by this Mortgage as part of the Debt together with interest from the date that such sum is advanced, payment made or expense incurred, to and including the date of reimbursement, computed at the Default Rate. Nothing in this Section 2.3 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Debt or shall increase the maximum principal amount which may under any contingency be secured by this Mortgage.

Section 2.4. Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder, the Company agrees to surrender possession of the Mortgaged Property to the Mortgagee and the Mortgagee may thereupon enter upon and take possession of the Mortgaged Property, enforce performance of and exercise any and all of its rights and remedies under this Mortgage, the Note and the other Loan Documents and apply the same on account of the indebtedness secured hereby, whether then matured or not, after payment of all proper charges and expenses, including, but not limited to, (i) Taxes, (ii) premiums for fire, public liability and other insurance coverage affecting the Mortgaged Property or any part thereof and (iii) any and all other costs, charges and expenses which it may be necessary or advisable for the Mortgagee to pay in

connection with completing the Mortgaged Property and/or managing, operating, maintaining or leasing the Mortgaged Property or any part thereof, including, but not limited to, the cost of making repairs and alterations, commissions for renting the Mortgaged Property or any part thereof, and legal expenses incurred in enforcing claims, preparing papers or any other services that may be required, or otherwise as a court of competent jurisdiction may direct. After taking possession of the Mortgaged Property, the Mortgagee may dispossess, by summary proceedings or otherwise, the Company, the Corporate Guarantor or other occupants of the Mortgaged Property or any part thereof then or thereafter in default in the payment of any rent, and the Company hereby irrevocably appoints the Mortgagee its true and lawful agent and attorney-in-fact (which agency shall be deemed to be coupled with an interest), with full power of substitution, for such purpose. In the event that the Company is then an occupant of the Mortgaged Property or any part thereof, it agrees to surrender possession of the Mortgaged Property or part thereof so occupied to the Mortgagee upon demand, and if the Company remains in possession after such demand, such possession shall be as tenant of the Mortgagee, and the Company agrees to pay monthly in advance to the Mortgagee such rent for the Mortgaged Property or part thereof so occupied as the Mortgagee may reasonably demand, and in default of so doing, the Company may also be dispossessed by summary proceedings or otherwise.

Section 2.5. Right To Cure Default. The Mortgagee shall have the right, but not the obligation, to comply with, perform or observe any covenant or obligation which the Company has failed to comply with, perform or observe under this Mortgage, the Note, or any other Loan Document and shall have the right to enter the Mortgaged Property at any time and from time to time for the purpose of curing such default, and any amounts so paid by the Mortgagee or the costs of such performance, together with all costs and expenses incurred by the Mortgagee in connection with such payment or performance, including, but not limited to, reasonable attorneys' fees and disbursements and interest on all such amounts, costs and expenses at the per annum rate equal to the maximum interest rate permitted by law, shall be paid by the Company, to the Mortgagee on demand. Until so paid, all such amounts, costs and expenses, together with interest thereon, shall be secured by this Mortgage and, if not paid, may be added to the judgment in any foreclosure action.

ARTICLE III

MISCELLANEOUS

Section 3.1. Notices. All notices or other communications required or otherwise given pursuant to this Mortgage shall be in writing and shall be personally delivered, delivered by overnight courier or mailed by registered or certified mail, postage prepaid, with return receipt requested, addressed as follows:

If to the Agency:

New York City Industrial Development Agency
110 William Street

New York, New York 10038
Attn: Executive Director (with a copy to the General Counsel)

If to the Company:

128 44TH REALTY HOLDING LLC
271 40th Street
Brooklyn, New York 11232
Attn: Nicky Barone

If to the Mortgagee:

SI BANK & TRUST, a division of SOVEREIGN BANK
1535 Richmond Avenue
Staten Island, New York 10314

Any party may change the person or address to whom or which notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed. Any notice or other communication given hereunder shall be deemed to have been given or delivered, if personally delivered, upon delivery, if sent by overnight courier, on the first (1st) business day of the Mortgagee after being sent, and if sent by mail, on the third (3rd) business day of the Mortgagee after mailing. Each party shall be entitled to rely on all communications which purport to be given on behalf of any other party hereto and purport to be signed by an authorized signatory of such party.

Section 3.2. Consent to Jurisdiction; Waivers. (a) The Company hereby consents to the jurisdiction of the courts of the State of New York and the state where the Mortgaged Property is located if the Mortgaged Property is not located in the State of New York in any actions, suits or proceedings arising out of or in connection with the Note or this Mortgage. In addition, the Company irrevocably and unconditionally waives any objection which the Company may now or hereafter have to the laying of venue of any of the aforesaid actions, suits, or proceedings arising out of or in connection with the Note or this Mortgage brought in any of the aforesaid courts, and hereby further irrevocably and unconditionally waives the right to plead or claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum; and

(b) The Company waives the requirements of personal service in connection with any actions, suits or proceedings arising out of or in connection with the Note or this Mortgage, and consents that all service of process may be made by certified mail, return receipt requested, addressed to the Company at the address of the Company set forth above in Section 3.1 as such address may be changed as therein set forth.

Section 3.3. Governing Law. Except to the extent that the law of the state where the Mortgaged Property is located must be applied because this Mortgage constitutes a

lien on premises located in that state, this Mortgage shall be construed in accordance with the laws of the State of New York, as the same may be in effect from time to time.

Section 3.4. Binding Obligations. The terms, covenants, provisions and conditions herein contained shall bind and inure to the benefit of the heirs, distributees, executors, administrators, successors and assigns of the parties hereto but the foregoing provisions of this Section shall not constitute a waiver of the provisions of Sections 1.13 and 1.14 above.

Section 3.5. Further Assurances. The Company will, at the request of the Mortgagee and at the cost and expense of the Company (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage, or in the execution, acknowledgment or recordation hereof, or (b) promptly do, execute, acknowledge and deliver any and all such further acts, deeds, conveyances, mortgages, deeds of trust, amendments, supplements, assignments, estoppel certificates, financing statements and continuations thereof, notices of assignment, transfers, certificates, assurances and other instruments as the Mortgagee may reasonably require from time to time in order to (i) effectuate the purposes of this Mortgage, (ii) subject to the lien and security interest hereby created any of the Company's properties, rights or interests covered or now or hereafter intended to be covered hereby, (iii) perfect and maintain such lien and security interest, or (iv) convey, grant, assign, transfer and confirm unto the Mortgagee the rights granted or now or hereafter intended to be granted to the Mortgagee hereunder or under any other instrument executed in connection with this Mortgage or which the Company may be or become bound to convey, mortgage or assign to the Mortgagee in order to carry out the intention or facilitate the performance of the provisions of this Mortgage. The Company hereby appoints the Mortgagee as its attorney-in-fact to execute, acknowledge and deliver for and in the name of the Company any and all of the instruments mentioned in this Section 3.5 and this power, being coupled with an interest, shall be irrevocable as long as any part of the Debt remedies unpaid.

Section 3.6. Captions. The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or describe the scope or intent of this Mortgage or any of the provisions hereof.

Section 3.7. Severability. If any term, covenant, condition or obligation of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such term, covenant, condition or obligation.

Section 3.8. Set-Off. The Company, to further secure the Debt, hereby (a) pledges and grants to the Mortgagee a security interest in and to and a lien on, any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Mortgagee or any affiliate of the Mortgagee to or for the credit or account of the Company (collectively, "Deposits"), and (b) irrevocably authorizes and directs the Mortgagee or any affiliate thereof at any time and from time to time upon the occurrence of an Event of Default under this Mortgage, or a default under the Note or any other Loan Document, without notice to the Company (any such notice being expressly waived by the Company) and to the fullest extent permitted

by law, to set off and apply any such Deposits against any and all obligations of the Company now or hereafter existing under the Loan Documents, or to hold such Deposits for future application against obligations thereafter arising under any of the Loan Documents irrespective of whether or not the Mortgagee shall have made any demand under any of the Loan Documents and although such obligations may be contingent or unmaturred. From and after the date of the occurrence of any default under any of the Loan Documents, the Mortgagee shall have dominion and control over such Deposits and shall have the sole ability to make withdrawals with respect to such Deposits. The Mortgagee agrees promptly to notify the Company after any such application made by the Mortgagee; provided, however, that the failure to give such notice shall not affect the validity of such application. The rights of the Mortgagee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Mortgagee may have hereunder or under applicable laws.

Section 3.9. General Conditions. (a) No provision of this Mortgage may be waived, changed, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the waiver, change, amendment, modification or discharge is sought.

(b) The Mortgagee may take or release other security for the payment of the Loan, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Loan without prejudice to any of its rights under this Mortgage.

(c) Subject to Section 3.11 hereof, no remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Nothing in this Mortgage or in the Note shall affect the obligation of the Company to pay the Debt in the manner and at the time and place therein respectively expressed. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, the Company: (i) will not (A) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect any of the terms, covenants, conditions or obligations of this Mortgage, or (B) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction; (ii) waives all benefit or advantage of any such law or laws; (iii) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted; and (iv) waives all right

to have the Mortgaged Property, or any other property of the Company to which the Mortgagee has, or may in the future have, a claim, marshaled upon any foreclosure hereof.

(d) No waiver by the Mortgagee or modification of the terms hereof shall be effective unless it is in writing and then only in the specific instance and for the specific purpose for which given and, notwithstanding anything to the contrary herein, all such waivers and modifications may be given or withheld in the sole judgment of the Mortgagee. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals, levies, fees or any other charges affecting the Mortgaged Property, shall not constitute a waiver of the Company's default in making such payments and shall not obligate the Mortgagee to make any further payments. The Company hereby irrevocably waives any right to claim that any provision of this Mortgage, including the provisions set forth in this Subsection, have been waived orally or by the acts or omissions of the Mortgagee.

(e) THE COMPANY ACKNOWLEDGES THAT IT HAS RECEIVED A TRUE COPY OF THIS MORTGAGE.

(f) If the Company shall request the Mortgagee's consent or approval pursuant to any of the provisions of this Mortgage or otherwise, and the Mortgagee shall fail or refuse to give, or shall delay in giving, such consent or approval, the Company shall in no event make, or be entitled to make, any claim for damages (nor shall the Company assert, or be entitled to assert, any such claim by way of defense, set-off, or counterclaim) based upon any claim or assertion by the Company that the Mortgagee unreasonably withheld or delayed its consent or approval, and the Company hereby waives any and all rights that it may have, from whatever source derived, to make or assert any such claim. The Company's sole remedy for any such failure, refusal, or delay shall be an action for a declaratory judgment, specific performance, or injunction, and such remedies shall be available only in those instances where the Mortgagee has expressly agreed in writing not to unreasonably withhold or delay its consent or approval or where, as a matter of law, the Mortgagee may not unreasonably withhold or delay the same.

(g) This Mortgage shall (i) be binding upon the Company and the Agency and their successors and assigns, and (ii) inure, together with all rights and remedies of the Mortgagee hereunder, to the benefit of the Mortgagee and its successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Mortgagee may assign or otherwise transfer all or any portion of its rights and obligations under any Loan Document, to any other person or entity, and such other person or entity shall thereupon become vested with all of the rights and obligations in respect thereof granted to the Mortgagee herein or otherwise. None of the rights or obligations of the Company and/or the Agency hereunder may be assigned or otherwise transferred without the prior written consent of the Mortgagee, except that the Agency's rights and obligations may be assigned or transferred in accordance with the IDA Lease Agreement.

(h) Without limiting the generality of Subsection (g) above, the Company hereby acknowledges that the Mortgagee may sell, grant or assign participation interest(s) in the Loan and in the Mortgagee's rights and obligations in respect of the Loan Documents, including this Mortgage, to one or more lending institutions satisfactory to the Mortgagee, on terms satisfactory to the Mortgagee. In the event that the Mortgagee shall sell, grant or assign participation interest(s) in the Loan and in the Mortgagee's rights and obligations in respect of the Loan Documents, (i) the Mortgagee may, in its sole discretion, disclose financial and other information to prospective participant(s) with respect to the Company, (ii) the Company shall cooperate with the Mortgagee in connection with any such participation and shall execute any and all documents which may be required or desirable, in the Mortgagee's or such participants' judgment, to effectuate any such participation(s), and (iii) each representation and agreement made by the Company in this Mortgage or in any of the other Loan Documents shall run to, and each reference to the Mortgagee shall be deemed to refer to, the Mortgagee and all of its participants(s).

(i) If the Company consists of more than one person or entity, the obligations and liabilities of each such person or entity hereunder shall be joint and several. The relative words herein of single or plural number, or masculine or feminine or neuter gender shall be read as if written in the single or plural, or in the male, neuter or female gender, as the context and as the case may be.

(j) Any check, draft, money order or other instrument given in payment of all or any portion of the Note or pursuant to this Mortgage may be accepted by the Mortgagee and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of the Mortgagee, except to the extent that actual cash proceeds of such instrument are unconditionally received by the Mortgagee and applied as the case may be to the Debt in the manner provided in the Note or to the sum due under this Mortgage.

(k) The Company represents that the Mortgaged Property is not improved by one or more structures containing, in the aggregate, not more than six residential units, each unit with separate cooking facilities.

(l) If the Company shall well and truly pay to the Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every term, covenant, condition and obligation set forth in this Mortgage and in the Note, then these presents and the estate hereby granted shall cease, terminate and be void.

(m) This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

(n) Nothing in this Mortgage shall be deemed to amend any of the terms of the IDA Company Lease, the IDA Lease Agreement, or the IDA Sublease Agreement or any documents, instruments or agreements entered into in connection with the IDA Lease Agreement.

Section 3.10. Representations and Warranties of the Agency. The Agency represents and warrants only that it has the power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in its interest in the Mortgaged Property as provided in this Mortgage and to own its property and assets, has duly authorized the execution and delivery of this Mortgage by proper corporate action, and neither this Mortgage, the authorization, execution, delivery and performance hereof by the Agency, the performance by the Agency of the agreements herein contained nor the consummation by the Agency of the transactions herein contemplated will violate any provision of law applicable to the Agency, any order of any court or agency of government applicable to the Agency or any agreement, indenture or other instrument to which the Agency is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any indenture, agreement or other instrument to which the Agency is a party or any provision of its by-laws or any other requirement of law. This Mortgage constitutes the legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.11. Limitation on Agency Liability. With respect to the Agency, it is agreed that the Agency, its officers, members, employees, agents and directors shall have no personal liability hereunder, nor in their capacity as officers, members, employees, agents and directors. The Agency has executed this Mortgage to subject its interest in the Mortgaged Property to the lien of this Mortgage; however, the Mortgagee shall have no recourse to the Agency other than to its interest in the Mortgaged Property. No provision, covenant or agreement contained in this Mortgage or any obligations herein imposed upon the Agency or the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Mortgage, the Agency has not obligated itself except with respect to the Mortgaged Property. All covenants, stipulations, promises, agreements and obligations of the Agency contained herein shall be deemed to be 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, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Mortgage. No covenant herein contained shall be deemed to constitute 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 covenant herein contained, nor shall the obligations secured by this Mortgage be payable out of any funds of the Agency.

Section 3.12. Joinder. The Agency is executing this Mortgage in order to mortgage and grant a security interest to the Mortgagee in all of the Agency's right, title and interest in and to the Agency's leasehold interest in the Land and the Improvements under the IDA Company Lease.

Section 3.13. Company's Representations and Covenants. The Agency is not obligated and shall not be liable to any extent for the representations and covenants of the Company made in or contained in this Mortgage.

Section 3.14. Agency is Executing Mortgage at Company's Direction. The Company directs the Agency to execute and deliver this Mortgage to the Mortgagee and consents and agrees to be bound by the terms hereof to the extent of the Company's present or future interest in the Mortgaged Property and hereby executes this Mortgage to evidence its agreement to comply with the covenants contained herein, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) in connection with the execution, delivery, recording, performing and enforcing of this Mortgage.

Section 3.15. Modification of IDA Documents. The Company covenants not to terminate or modify the IDA Lease Agreement or any other document executed in connection with the foregoing, or any related agreements with the Agency (collectively, the "IDA Documents") without the prior consent of the Mortgagee.

Section 3.16. Termination of IDA Lease Agreement. Upon the termination of the IDA Lease Agreement for any reason whatsoever and at the sole cost and expense of the Company, but solely upon the request of the Agency, the Mortgagee shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents reasonably necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

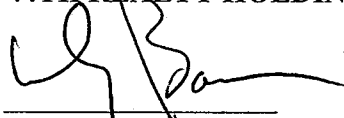
Section 3.17. Notices under IDA Documents and Leases. The Company shall forward to the Mortgagee copies of any and all notices (including all notices of default) and transmittal letters (including transmittal letters of principal and interest) delivered in connection with the IDA Documents and sublease immediately, but in any event no later than one (1) day after mailing or receiving such notices and letters.

Section 3.18. Certificate of Occupancy. The Company shall obtain a Permanent Certificate of Occupancy or Certificate of Completion ("Certificate") for the Mortgaged Property incorporating all additions and improvements indicated by the open building permits #300162525/1992 and #301327632/2002 and deliver said Certificate to the Mortgagee on or before February 29, 2008.

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IN WITNESS WHEREOF this Mortgage has been duly executed by the Agency and the Company on the day and year first above written.

128 44TH REALTY HOLDING LLC

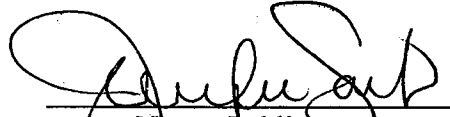
By: 
Name: Nicky Barone
Title: Managing Member

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By: 
Maureen Babis
Executive Director

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

On the 29th day of August in the year 2007 before me, the undersigned, a notary public in and for said State, personally appeared Nicky Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

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

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2010

On the ²⁸~~29~~th day of August in the year 2007 before me, the undersigned, a notary public in and for said State, personally appeared Maureen Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2011


Notary Public

SCHEDULE A

Property Description

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of 44th Street, distant 150 feet southeasterly of the intersection formed by the southeasterly side of 1st Avenue and the southwesterly side of 44th Street;

RUNNING THENCE southwesterly parallel with 1st Avenue, through a party wall, 250 feet;

THENCE southeasterly parallel with 44th Street 75 feet;

THENCE northeasterly parallel with 1st Avenue, 250 feet to the southwesterly side of 44th Street;

THENCE northwesterly along the southwesterly side of 44th Street, 75 feet to the point or place of BEGINNING.

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

AND SAID PREMISES being known as and by the street number 128 44th Street, Brooklyn, New York 11232.

Copy

MORTGAGE NOTE

\$1,945,000.00

New York, New York

August 29, 2007

FOR VALUE RECEIVED, the undersigned, 128 44TH REALTY HOLDING LLC, a New York limited liability company with a place of business at 271 40th Street, Brooklyn, New York 11232 ("Borrower"), promises to pay to the order of SI BANK & TRUST, a division of SOVEREIGN BANK, a federal savings bank (the "Bank") having an office at 1535 Richmond Avenue, Staten Island, New York 10314 (or such other place designated by the holder of this Note in writing) the principal sum of ONE MILLION NINE HUNDRED FORTY FIVE THOUSAND AND 00/100 (\$1,945,000.00) DOLLARS, together with interest thereon from the date hereof at the rates set forth herein and in accordance with the terms and conditions hereof.

1. Principal and Interest

(i) interest on the Principal Balance calculated on the SI BANK & TRUST, a division of SOVEREIGN BANK Prime Rate plus one half (0.5%) shall be due and payable on October 5, 2007 and on the 5th day of each calendar month thereafter to and including the Maturity Date. The "Prime Rate" shall mean such rate of interest as is publicly announced by SI BANK & TRUST, a division of SOVEREIGN BANK at its principal office from time to time as its prime rate. Any change in the Prime Rate shall be effective on the date such change is announced by the Bank.

(ii) the unpaid Principal Sum, together with all accrued and unpaid interest as provided in this Note, and all other sums due and payable under the Note and Mortgage, on March 5, 2008, (the "Maturity Date") or on such earlier date, upon acceleration, in the event of a default hereunder or otherwise.

(iii) the final payment (whether payable on the Maturity Date or otherwise) shall equal all outstanding principal together with all accrued and unpaid interest. Interest during the term of the Note shall be calculated on the basis of a 360 day year and the actual number of days elapsed.

2. Prepayments

(a) The principal balance may be prepaid in whole or in part at any time without a prepayment fee.

3. Payments.

The Borrower agrees that all payments due under this Note and the Mortgage (as hereinafter defined) shall be made by automatic debit from an account maintained by the Borrower at the Bank, in which the Borrower shall maintain balances sufficient to pay each monthly payment due to the Bank under this Note and the Mortgage. In the event that the money maintained in such account is

Copy

insufficient for any payment due under this Note and the Mortgage, the Bank may charge any account of the Borrower for any payment due to the Bank under this Note and the Mortgage. If any payment of this Note becomes due and payable on a day which is not a business day, the maturity thereof shall be extended to the next succeeding business day and interest thereon shall be payable during such extension. If any payment of this Note becomes due and payable on a day which is not a business day, the maturity thereof shall be extended to the next succeeding business day and interest thereon shall be payable during such extension.

4. Usury

If the provisions of this Note would at any time otherwise require payment by the Borrower to the Bank of any amount of interest in excess of the maximum amount then permitted by applicable law the interest payments shall be reduced to the extent necessary so that the Bank shall not receive interest in excess of such maximum amount.

5. Agreements Relating to this Note

This Note is executed in connection with, and is secured by: (i) certain mortgage made by the Borrower to the Bank (the "Mortgage") on property situate at 128 44th Street, Brooklyn, New York 11232 (the "Premises") and more particularly described in said Mortgage; (ii) first lien on and security interest in all equipment, fixtures and personal property appurtenant to and used in connection with the Premises; (iii) a certain assignment of leases and rents made by the Borrower to the Bank of even date herewith (the "Assignment of Leases"); and (iv) the joint and several guarantees of Nicky Barone, Ralph Barone, Barone Steel Fabricators Inc. and Barfab Steel Corp. (collectively, the "Indemnitors") to the Bank (the "Guaranties") (this Note, the Mortgage, the Assignment of Leases, and the Guaranties collectively, the "Loan Documents"). This Note is subject to all the terms and conditions of the Loan Documents as if fully set forth herein.

6. Default and Late Charge

The entire principal sum together with accrued interest thereon shall become due and payable at the option of the Bank upon any default hereunder or upon the happening of an event constituting a default under the Loan Documents.

All payments due hereunder which are in default shall bear interest at the rate in effect at the time of default plus five (5%) percent. In addition, there shall be a late charge imposed, equal to five (5%) percent of the amount of any overdue payment if received fifteen (15) days or more after it is due.

7. Right of Set Off

The Borrower hereby grants to the Bank a lien, security interest and right of setoff as security for all liabilities and obligations to Bank, whether now existing or hereafter arising, upon and against

Copy

all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of the Bank or any affiliate of the Bank, or in transit to any of them. At any time, without demand or notice, the Bank may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing this Note. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THIS NOTE PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

8. Governing Law

This Note shall be governed and construed in accordance with the laws of the State of New York. In no event will interest be charged or collected hereunder at a rate in excess of that permitted by applicable law.

9. Trial By Jury

The Borrower and the Bank hereby agree to waive the right to a trial by jury in any action on or related to this Note or any other document executed in connection with this Note.

10. Financial Statements

(A) The Borrower shall deliver, or shall cause to be delivered, to the Bank the following:

(i) as soon as available and in any event within 120 days of the end of each fiscal year of the Borrower, a copy of the financial statements of the Borrower for such year, including federal income tax returns, balance sheets and statements of retained earnings and statements of cash flow, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, prepared on a compilation basis by independent certified public accountants selected by the Borrower and reasonably satisfactory to the Bank, all such financial statements to be prepared in accordance with generally accepted accounting principles consistently applied; and

(ii) as soon as available and in any event no later than with the delivery of the annual financial statements required to be delivered pursuant to subsection (i) above, an annual income and expense statement for the Premises, accompanied with a rent roll and projected expenses for the coming year, in form and substance satisfactory to the Bank; and

(iii) such other information as the Bank may reasonably request from time to time.

(B) The Borrower shall deliver, or shall cause to be delivered, to the Bank documentary proof of a minimum debt service coverage ratio of 1.00 on each anniversary date of this Note.

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(C) The Borrower shall deliver, or shall cause to be delivered, to the Bank documentary proof of a minimum debt service coverage ratio of 1.25 for Barone Steel Fabricators Inc. on each anniversary date of this Note.

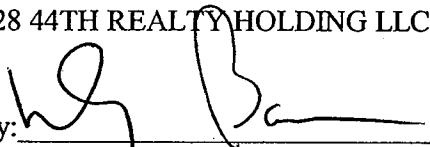
11. Miscellaneous

The Borrower and any endorsers or guarantors of this Note for themselves, their heirs, legal representatives, successors and assigns, respectively and severally waive presentment, demand, protest and notice of dishonor and waive any right to be released by reason of any extension of time, delay in enforcement or change in terms of payment or any change, alteration or release of any security given for the payment hereof, and jointly and severally agree to pay any costs and expenses, including attorneys' fees if, upon default hereunder or under the Loan Documents, same are incurred to secure collection hereof.

This Note can only be amended, modified, or canceled in writing signed by the Bank.

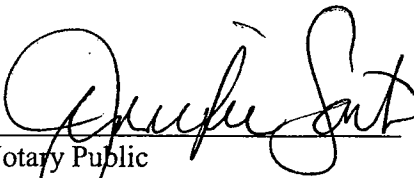
IN PRESENCE OF:

128 44TH REALTY HOLDING LLC

By: 
Name: Nicky Barone
Title: Managing Member

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

On the 29th day of August in the year 2007 before me, the undersigned, a notary public in and for said State, personally appeared Nicky Barone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Jennifer Santo
Notary Public, State of New York
No. 01SA5065499
Qualified in Kings County
Commission Expires 9/9/2010

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LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION**EXPIRATION DATE: August 1, 2008****ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS;
128 44th Street, Brooklyn, New York**

August 29, 2007

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2007 Barone Steel Fabricators, Inc.)

Ladies and Gentlemen:

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

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

Pursuant to a resolution adopted by the Agency on July 23, 2007, and a certain Lease Agreement, dated as of August 1, 2007 (the "Lease Agreement"), between the Agency and 128 44th Realty Holding LLC, a New York limited liability company (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition and renovation of an industrial facility (the "Facility") consisting of the acquisition of an approximately 18,750 square foot parcel of land and an approximately 21,600 square foot building thereon, and the renovation of such building, located at 128 44th Street, Brooklyn, New York, all for use in the business as a fabricator and erector of structural steel for commercial industrial and larger residential buildings in the New York metropolitan area (the "Project"), for use and occupancy by the Company and its permitted sublessee, Barone Steel Fabricators, Inc., a New York corporation (the "Sublessee").

In connection with such resolutions, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the renovation of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Exhibit A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency

appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the renovation of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Exhibit B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Exhibit B.

As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the renovation of the Project, shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by 128 44th Realty Holding LLC, a New York limited liability company [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent being the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land at 128 44th Street, Brooklyn, New York, and the renovation of such building, all for use in the business as a fabricator and erector of structural steel for commercial, industrial, and larger residential buildings in the New York metropolitan area, (the "Project"). The [purchase, lease, rental, use] of the [materials, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [*insert name and address of vendor* (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the

Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company or by any Agent is strictly for the purposes above stated.

Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the “Termination Date”), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Exhibit B and in the Agency Agreement referred to therein.

Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for annual renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for


Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

The Agency further appoints the Sublessee its agent for purposes of using the Facility.

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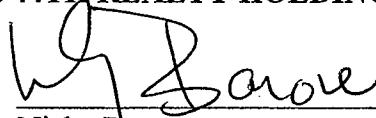
The signature of a representative of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee have accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Maureen P. Babis
Executive Director

ACCEPTED AND AGREED TO BY:

128 44TH REALTY HOLDING LLC

By: 
Nicky Barone
President

BARONE STEEL FABRICATORS INC.


By: 
Name: Nicky Barone
President

Exhibit A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements.** With respect capital improvements to the Facility:

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility;

(b) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

(ii) **Personal Property.** None.

(iii) **Services.** With respect the eligible items identified in (i)(a) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

Exhibit B

Form ST-60--Required Procedures

Introduction. Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

Required Procedures. In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. Agency Agreement. Prior to submitting to the Agency a completed Form-ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and [*identify Company or Company Agent*] _____ dated _____, 200_ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A [*attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company*].
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Exhibit B).

- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility). If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
 - i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

- ii. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- iii. has been convicted of a felony in the past ten (10) years;
- iv. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- v. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf into the address bar of your internet browser and saving the “fill-in” PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to Compliance@nycedc.com.

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

Addendum A

FORM ST-60



MEMORANDUM OF CLOSING

(2007 Barone Steel Fabricators, Inc. Project)

of

New York City Industrial Development Agency
New York, New York

August 29, 2007

The closing of the above captioned straight lease project took place at the offices of Hawkins Delafield & Wood LLP, One Chase Manhattan Plaza, New York, New York at ten o'clock a.m. on August 29, 2007.

All terms used herein shall have the same meaning as those used in the Lease Agreement, dated as of August 1, 2007, between New York City Industrial Development Agency (the "Agency") and 128 44th Realty Holding LLC (the "Lessee").

I. Prior to the closing the following had occurred:

- (A) Barone Steel Fabricators, Inc. (the "Sublessee") submitted its application to the Agency requesting the Agency to provide financial assistance through its Industrial Incentive Program for the acquisition and renovation of an industrial facility (the "Facility"), consisting of the acquisition of an approximately 21,600 square foot building, located on an approximately 18,750 square foot parcel of land, located at 128 44th Street, Brooklyn, New York, and the renovation of such building all for use in the Sublessee's business as a fabricator and erector of structural steel for commercial, industrial and larger residential buildings in the New York metropolitan area (the "Project").
- (B) On June 12, 2007 and on July 23, 2007, the Agency adopted a resolution (i) authorizing the Project and undertaking to permit the financial assistance for the Project, to lease the Facility Realty from the Lessee and to sublease the Facility Realty to the Lessee, (ii) authorizing the execution and delivery of the Lease Agreement and the taking of other action in connection therewith, and (iii) authorizing and approving matters related to the Project.

II. There were represented at the closing the following parties:

- (A) New York City Industrial Development Agency

By: Jay Lopez, Esq.

(B) Hawkins Delafield & Wood LLP

By: Robin Sherak, Esq.

(C) 128 44th Realty Holding LLC

By: Ralph Barone

(D) Barone Steel Fabricators, Inc.

By: Nicky Barone

(E) Nicky Barone

(F) Ralph Barone

(G) Caruso, Caruso & Branda PC

By: Mark Caruso, Esq.

(H) Lawyers Title Insurance Corporation

By: Jennifer Santo

(I) SI Bank & Trust (Sovereign Bank)

By:

(J) Cullen and Dykman

By: Patricia Russo, Esq.

III. The Closing - All transactions at the Closing were deemed to have taken place simultaneously, and no transactions were deemed to have been completed and no document was deemed to have been delivered unless and until all transactions were completed and all documents delivered.

IV. At the Closing all of the documents specified in the Table of Contents to the Record of Proceedings were delivered.