

Lease Agreement

LEASE AGREEMENT

Dated as of December 1, 2008

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

LGF REALTY LLC;
as Lessee

and joined in by

LUCKY SONS LLC

2008 Best Choice Trading Corporation Project

Affecting the Land generally known by the street addresses
150 Stewart Avenue, Brooklyn, New York
Block 2964 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 11
 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 12

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1. The Company Lease 16
 Section 2.2. The Project 16
 Section 2.3. Leasehold Title Insurance 17
 Section 2.4. Limitation on Sales Tax Exemption 18

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1. Lease of the Facility 22
 Section 3.2. Duration of Term 22
 Section 3.3. Rental Provisions 22
 Section 3.4. Rental Payments Payable Absolutely Net 22
 Section 3.5. Nature of Lessee's Obligation Unconditional 23
 Section 3.6. Assignment of Sublease Agreement 23

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements 24
 Section 4.2. Removal of Property of the Facility 25
 Section 4.3. Payment in Lieu of Real Estate Taxes 26
 Section 4.4. Taxes, Assessments and Charges 32
 Section 4.5. Insurance 32
 Section 4.6. Advances by Agency 35
 Section 4.7. Compliance with Legal Requirements 35

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage, Destruction and Condemnation 37

TABLE OF CONTENTS

Page

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1. Dissolution of Lessee; Restrictions on Lessee 40

Section 6.2. Indemnity 40

Section 6.3. Compensation and Expenses of the Agency 44

Section 6.4. Retention of Title to or of Interest in Facility; Grant of Easements; Release
of Facility 44

Section 6.5. Discharge of Liens 45

Section 6.6. Agency’s Authority; Covenant of Quiet Enjoyment 46

Section 6.7. No Warranty of Condition or Suitability 46

Section 6.8. Financial Statements; No-Default Certificates 46

Section 6.9. Employment Information, Opportunities and Guidelines 47

Section 6.10. Further Assurances 48

Section 6.11. Recording and Filing 49

Section 6.12. Further Encumbrances 49

Section 6.13. Subtenant Survey 49

Section 6.14. Signage at Project Site 49

Section 6.15. Certain Continuing Representations 49

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1. Events of Default 50

Section 7.2. Remedies on Default 51

Section 7.3. Remedies Cumulative 52

Section 7.4. No Additional Waiver Implied by One Waiver 52

Section 7.5. Effect on Discontinuance of Proceedings 52

Section 7.6. Agreement to Pay Attorneys’ Fees and Expenses 53

ARTICLE VIII

OPTIONS TO TERMINATE; RECAPTURE OF BENEFITS

Section 8.1. Option to Terminate Agreement 54

Section 8.2. Release of Interest in Facility upon Exercise of Option to Terminate 54

Section 8.3. [Reserved] 55

Section 8.4. Termination of Agreement 55

Section 8.5. Recapture of Public Benefits 55

ARTICLE IX

MISCELLANEOUS

Section 9.1. Force Majeure 59

TABLE OF CONTENTS

	<u>Page</u>
Section 9.2. Priority	59
Section 9.3. Assignment or Sublease	60
Section 9.4. Amendments	61
Section 9.5. Notices	62
Section 9.6. Prior Agreements Superseded	63
Section 9.7. Severability	63
Section 9.8. Inspection of Facility	63
Section 9.9. Effective Date; Counterparts	63
Section 9.10. Binding Effect	63
Section 9.11. Third Party Beneficiaries	63
Section 9.12. Law Governing	63
Section 9.13. Waiver of Trial by Jury	63
Section 9.14. Non-Discrimination	64
Section 9.15. Recourse Under This Agreement	64
Section 9.16. Date of Agreement for Reference Purposes Only	64

ARTICLE X

EXEMPTION FROM MORTGAGE RECORDING TAXES

Section 10.1. Definitions	65
Section 10.2. Applicability of Exemptions	65

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	

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of December 1, 2008 (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 **LGF REALTY LLC**, a limited liability company organized and existing under the laws of the State of New York (the "**Lessee**"), having its principal office at 150 Stewart Avenue, Brooklyn, New York 11237, party of the second part;

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "**Enabling Act**"), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (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 Best Choice Trading Corporation, 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 that certain lot, piece or parcel of land in Block 2964 and Lot 50, generally known as and by the street address 150 Stewart Avenue, 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, construction and renovation of a warehouse facility consisting of the expansion of an approximately 19,840 square foot existing building at 146 Stewart Avenue, Brooklyn, New York ("**Facility 146**") with the acquisition, construction and renovation of an approximately 8,749 square foot building on an approximately 9,284 square foot parcel of land located at 150 Stewart Avenue, Brooklyn, New York, (the "**Facility**"), all for use in the refrigeration and warehousing of wholesale seafood by the Sublessee (the "**Project**"); and

WHEREAS, Facility 146 is owned by Lucky Sons LLC, a New York limited liability company affiliated with the Lessee ("**Lucky Sons**"); 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 September 9, 2008 (the "**Authorizing Resolution**"), inducing and authorizing the undertaking of the Project, the acquisition, construction 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 \$962,500 to be made by HSBC Bank USA, National Association (the "**First Mortgagee**") to the Lessee (the "**First Mortgage Loan**"), (ii) a loan in the principal amount of \$691,000 to be made by Empire State Certified Development Corporation (the "**Second Mortgagee**") 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 Second Mortgagee has agreed to make an advance to the Lessee in the amount of \$691,000 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 the Second Mortgage; 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.

Affiliate Guarantor shall mean Lucky Sons LLC, a New York limited liability company, and its permitted successors and assigns pursuant to Section 6.1 or 9.3 hereof.

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 December 1, 2008, between the Agency and the Lessee, as joined in for certain limited purposes by Lucky Sons, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean the warehousing facility located at 150 Stewart Avenue, Brooklyn, New York, all for use in the refrigeration and warehousing of wholesale seafood.

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 Affiliate Guarantor, a Managing Member or member of the Affiliate Guarantor or any other employee who is authorized to perform specific duties hereunder and of whom another Authorized Representative of the Affiliate Guarantor has given written notice to the Agency, (iv) 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 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 Second Mortgagee to the Lessee in the amount of \$691,000, representing the principal amount of the Bridge Loan, in connection with the Project.

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 Second 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 December 11, 2008, 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 December 1, 2009.

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 Best Import Export Corp., a New York corporation its successors and assigns pursuant to Section 6.1 or 9.3 hereof.

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, construction 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, 2034.

Facility shall mean the Facility Realty.

Facility 146 shall mean the warehouse facility located at 146 Stewart Avenue, Brooklyn, New York on Land 146.

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 HSBC Bank USA, National Association 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 \$962,500, 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, the Affiliate Guarantor, the Corporate Guarantor 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, Lee Fung Fong and Lynn Gian, and their respective estates, administrators, successors and assigns.

Land shall mean that certain lot, piece or parcel of land in **Block 2964** and **Lot 50**, generally known by, respectively, the street address 150 Stewart Avenue, 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.

Land 146 shall mean that certain lot, piece or parcel of land in **Block 2964** and **Lot 44**, generally known by, respectively, the street address 146 Stewart Avenue, Brooklyn, New York, all as more particularly described in Exhibit A-2 - "Description of the Land 146" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

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 LGF Realty 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.

Lucky Sons shall mean Lucky Sons LLC, a New York limited liability company, and its permitted successors and assigns.

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 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 Mortgagee) 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, 2009

PILOT Depository shall mean The Bank of New York Mellon, 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.

Sales Tax Savings shall mean all exemptions from Sales Taxes realized by or for the benefit of the Lessee pursuant to this Agreement and/or the Sales Tax Letter by reason of the Agency's involvement in the Project or any part thereof.

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 \$691,000, 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 Best Choice Trading Corporation, 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 obligations of the Lessee to repay the Loans made by the Mortgagees to the Lessee 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 \$2,625,000 of which it is anticipated that approximately \$1,653,000 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 8,749 rentable square feet.

(s) The aggregate square footage of the Land is approximately 9,284 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 _____, a New York limited liability company [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency in connection with a certain project of the Agency for the Agent being the acquisition, construction and renovation of a warehousing facility (the "Facility"), consisting of the acquisition, construction and renovation of an approximately 8,749 square foot building on an approximately 9,284 square foot parcel of land located at 150 Stewart Avenue, Brooklyn, New York, all for use in the refrigeration and warehousing of wholesale seafood (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, 2009, 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 renovated 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, construction and renovation of an approximately 8,749 square foot building on an approximately 9,284 square foot parcel of land located at 150 Stewart Avenue, Brooklyn, New York, all for use in the refrigeration and warehousing of wholesale seafood. The Facility is located at 150 Stewart Avenue, Brooklyn, New York, being **Block 2964** 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) with respect to the Land, payments in lieu of real estate taxes shall be in the amounts determined pursuant to subsection (d) below; and (ii) 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:*

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, 2030 to June 30, 2031, a payment equal to 20% of Full Land Taxes (as defined below) for that year; for July 1, 2031 to June 30, 2032, a payment equal to 40% of Full Land Taxes for that year; for July 1, 2032 to June 30, 2033, a payment equal to 60% of Full Land Taxes for that year; and for July 1, 2033 to June 30, 2034, a payment equal to 80% of Full Land Taxes for that year.

"**PILOT Commencement Date**" shall mean July 1, 2009.

"**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:*

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

- A. from the PILOT Commencement Date through June 30, 2030, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2030, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2030 - June 30, 2031	STRET + [(CRET less STRET) x 0.2]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.4]
July 1, 2032- June 30, 2033	STRET + [(CRET less STRET) x 0.6]
July 1, 2033- June 30, 2034	STRET + [(CRET less STRET) x 0.8]

provided, however, with respect to this subparagraph “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* 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) *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 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 or of Facility 146, the Lessee and Lucky Sons shall jointly and severally 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, the Sublessee and Lucky Sons. 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 or Facility 146, 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, Lucky Sons 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, the Sublessee and Lucky Sons as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility or Facility 146 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 both Lucky Sons' and the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee and Lucky Sons (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 or Lucky Sons 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, Lucky Sons or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee, Lucky Sons or the Sublessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility or Facility 146; the Lessee and Lucky Sons 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, Lucky Sons 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 Facility 146; 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, Lucky Sons 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, Lucky Sons, 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 or Facility 146 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 or Facility 146 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 and Lucky Sons 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 and Lucky Sons, 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 and Lucky Sons 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 and Lucky Sons shall, at their own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee and Lucky Sons 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, THE SUBLESSEE OR LUCKY SONS.

(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 and Lucky Sons 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 and Lucky Sons in writing of any such failure on its part (except that no prior notification of the Lessee or of Lucky Sons 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 or by Lucky Sons to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee or of Lucky Sons to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Lessee or Lucky Sons 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 have 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 Mortgage.

(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, and (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 and Lucky Sons shall at all times jointly and severally indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee and Lucky Sons, which are not obligated hereby to indemnify their respective 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 September 9, 2008, 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 Facility 146, the Project, or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility, the Facility 146 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 Facility 146, or any defects (whether latent or patent) in the Facility or Facility 146,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or Facility 146 or any portion of either thereof,

(iv) the execution and delivery by an Indemnified Party, the Lessee, Lucky Sons or any other Person of, or performance by an Indemnified Party, the Lessee, Lucky Sons 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 or Facility 146, including, but not limited to, any injury for which Specific Coverage under Section 4.5(a) above applies to the Lessee, Lucky Sons 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 or Lucky Sons, (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 or Facility 146,

(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 or Facility 146; 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 and Lucky Sons release each Indemnified Party from, and agree that no Indemnified Party shall be liable to the Lessee or Lucky Sons 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 Lucky Sons 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 and Lucky Sons in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee and Lucky Sons pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee and Lucky Sons 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 or of Lucky Sons 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 July 15, 2008, prepared by Jacques Whitford Company 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 obligations of the Lessee and Lucky Sons 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 and Lucky Sons are 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 and Lucky Sons will provide for and insure, in the general liability policies required in Section 4.5 hereof, not only their 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 and of Lucky Sons (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 or Lucky Sons at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee and Lucky Sons contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee or Lucky Sons 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 \$33,788.00 (said amount representing the \$35,438 financing fee, plus an annual administrative fee of \$850, less an application fee of \$2,500), 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 \$850 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2007) 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, 2009, 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, 2009, 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"):

**FINANCIAL ASSISTANCE PROVIDED
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; (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 the 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, or failure of Lucky Sons to observe and perform any covenant, condition or agreement on its part to be performed under Section 6.2 and continuance of such failure for a period of thirty (30) days after receipt by the Lessee or Lucky Sons of written notice specifying the nature of such default from the Agency; or

(ii) Failure of the Lessee or Lucky Sons to observe and perform any covenant or agreement on its part to be performed under Section 4.5 or 4.6 hereof and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee or Lucky Sons 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 Affiliate 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 Affiliate Guarantor or any 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 Affiliate Guarantor or any 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 Affiliate Guarantor or any 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 Affiliate Guarantor or any 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 Affiliate 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 Mortgage.

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;

(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. Pursuant to the Second Mortgage Loan and Bridge 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 are 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 respective 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 LGF Realty LLC, c/o Best Choice Trading Corporation, 150 Stewart Avenue, Brooklyn, New York 11237, Attention: President, with a copy to Fong & Wong PC, 254 Canal Street, New York, New York, 10013, Attention: Edmond J. Fong, Esq.

(c) if to Lucky Sons LLC, to Lucky Sons LLC, c/o Best Choice Trading Corporation, 150 Stewart Avenue, Brooklyn, New York 11237, Attention: President, with a copy to Fong & Wong PC, 254 Canal Street, New York, New York, 10013, Attention: Edmond J. Fong, 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, 2009 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 the Mortgagees 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 HSBC Bank USA, National Association 5515 8th Avenue, Brooklyn, New York, 11220, Attention: Commercial Mortgage Loans, with a copy to: Hamburger, Maxson, Yaffe, Wishod & Knauer, LLP, 225 Broadhollow Road, Suite 301, Melville, NY 11747, Attention: Todd Knauer, 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: Brendan Deriggi, 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 are 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.

ARTICLE X

EXEMPTION FROM MORTGAGE RECORDING TAXES

Section 10.1. Definitions. Terms used in this Article X but not defined herein shall have the meanings provided below:

Exempt Mortgage means, a Mortgage, the recording of which is exempt from Mortgage Recording Taxes by reason of the Agency being a mortgagor thereunder.

Gap Mortgage means, upon any refinancing of the outstanding principal balance of the indebtedness secured by the Mortgage, the separate mortgage that will initially secure New Money

New Money means, upon any refinancing of the outstanding principal balance of the indebtedness secured by the Mortgage, any additional loan proceeds that may be advanced as part of such mortgage refinancing.

Mortgage Recording Taxes means those taxes imposed by the City and the State upon the recording of mortgages against real property in the City.

Non-Exempt Principal means that portion of the indebtedness secured by an existing Exempt Mortgage that may be outstanding on the Expiration Date (as may be reasonably calculated by the Agency at a given point in time) or on any earlier termination of this Agreement, as the context requires.

PILOMRT means payment(s) in lieu of mortgage recording taxes as such payments are calculated using the mortgage recording tax rate in effect at time of payment.

NPV means a net-present-value calculation of an amount due at a future date using such discount rate as may be required by the Agency from time to time.

NPV-PILOMRT means the net-present-value calculation of a PILOMRT due at the Expiration Date using such discount rate as may be required by the Agency from time to time.

Section 10.2. Applicability of Exemptions. (a) Lessee acknowledges that the Agency has exempted an Exempt Mortgage from the payment of Mortgage Recording Taxes for a term, such term to commence on the date of the Exempt Mortgage and to end on the earlier to occur of (i) the Expiration Date or sooner termination of this Agreement, or (ii) the maturity or sooner termination of the Exempt Mortgage.

(b) Lessee acknowledges and agrees that the Agency is not obligated to exempt the recording of any mortgage from the payment of Mortgage Recording Taxes other than an Exempt Mortgage; nor is the Agency obligated to exempt from the payment of Mortgage Recording Taxes any extension, modification or other amendment to, or any assignment, consolidation or restatement of an Exempt Mortgage.

(c) The Agency agrees that, if in connection with the refinancing of an Exempt Mortgage the Lessee causes the holder to assign an Exempt Mortgage to a new lender and thereby causes the Exempt Mortgage (as assigned) to continue to be exempt from Mortgage Recording Taxes, the Agency will not object to such assignment, provided that (i) the Agency is made a party to the Exempt Mortgage as so assigned and modified, and (ii) the Exempt Mortgage, as so assigned and modified, has provisions reasonably required by the Agency, and (iii) New Money, if any, is initially secured by a Gap Mortgage, and (iv) the Lessee makes the following payments (as applicable) at the time of refinancing to the City's Department of Finance:

(i) Mortgage Recording Taxes with respect to any Gap Mortgage; and

(ii) NPV-PILOMORT with respect to any Non-Exempt Principal less the amount of any principal for which Mortgage Recording Taxes and/or PILOMORT and/or NPV-PILOMORT have already been paid or are being concurrently paid.


(d) If this Agreement terminates prior to the Expiration Date and, as a result, there is Non-Exempt Principal, Lessee shall either pay PILOMORT with respect to such Non-Exempt Principal or deliver in-lieu thereof a satisfaction of the Exempt Mortgage to the Agency.

(e) Lessee agrees that, notwithstanding delivery by the Lessee of a satisfaction of an Exempt Mortgage on the Expiration Date or on any earlier date when this Agreement may be terminated, or evidence of any reduction in the anticipated amount of Non-Exempt Principal outstanding as of the Expiration Date, the Agency shall not be obligated to refund to the Lessee any amounts of PILOMORT or NPV-PILOMORT previously paid.

[Remainder of this Page Intentionally Left Blank]

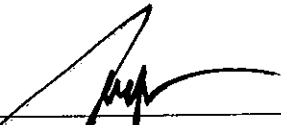
IN WITNESS WHEREOF, the Agency has caused its corporate name to be subscribed unto this Lease Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee and Lucky Sons has caused its name 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

LGF REALTY LLC

By: 

Name: Lee Fung Fong
Title: member

By the execution below, the undersigned hereby consents to, and assumes all payments, obligations, covenants and agreements of the undersigned set forth in this Agreement, including, without limitation, Sections 4.5, 4.6 and 6.2

LUCKY SONS LLC

By: 

Name: Lee Fung Fong
Title: member

STATE OF NEW YORK)

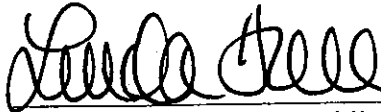
)

ss.:

COUNTY OF NEW YORK)

)

On the 11 day of December, in the year two thousand eight, before me, the undersigned, personally appeared Wei Fung Fong, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LINDA HALL
Notary Public, State of New York
No. 01HA5072988
Qualified in Nassau County
Commission Expires February 24, 2011

STATE OF NEW YORK

)

ss.:

COUNTY OF NEW YORK

)

On the 11 day of December, in the year two thousand eight, before me, the undersigned, personally appeared Lee Fung Bong, personally known to me or proved to me on the basis of satisfactory evidence to me the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LINDA HALL
Notary Public, State of New York
No. 01HA5072988
Qualified in Nassau County
Commission Expires February 24, 2011

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

On the 9 day of December, in the year two thousand eight, 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.



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

APPENDICES

Exhibit A

DESCRIPTION OF THE LAND

SCHEDULE A

(LEGAL DESCRIPTION)

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

BEGINNING at a point on the Easterly side of Stewart Avenue, distant 110 feet 4 inches Northerly from the intersection formed by the Easterly side of Stewart Avenue and the Northerly side of Meserole Street;

THENCE Easterly on a line parallel to Meserole Street and part of the distance through a party wall, 159 feet 2 5/8 inches to the Westerly line of Tax Lot 20 in Block 2964 in the Borough of Brooklyn on the Tax Map of the City of New York;

THENCE RUNNING Northerly and along the Westerly side of said Tax Lot 20 and on a curve having a radius of 423 feet, a distance of 12 feet 9 1/8 inches;

THENCE continuing along the Westerly side of said Tax Lot 20 on a line parallel to the Westerly side of Gardner Avenue, 45 feet 7 inches;

THENCE Westerly on a line parallel with Meserole Street and part of the distance through a party wall, 158 feet 9 inches to the Easterly side of Stewart Avenue;

THENCE Southerly and along the Easterly side of Stewart Avenue 58 feet 4 inches to the point or place of **BEGINNING**.

PREMISES being and intended to be the same as those conveyed in deed recorded in Reel 1963 Page 357.

FOR INFORMATION ONLY:

Premises are also known as:

County:	Kings
Block:	2964
Lot:	50
Address:	150 Stewart Avenue, Brooklyn, NY 11237

Exhibit B

PROJECT COST BUDGET

	<u>Loan</u>	<u>Funds of Lessee and/or Sublessee</u>	<u>Total</u>
Land and Building Acquisition	\$1,653,500	\$271,500	\$1,925,000
Renovation	0	600,000	600,000
Equipment and Machinery	0	0	0
Fees/Other Soft Costs		<u>100,000</u>	<u>100,000</u>
Total	\$1,653,500	\$971,500	\$2,625,000

Exhibit C

[FORM OF SALES TAX LETTER]

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

EXPIRATION DATE: December __, 2009

ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS:

150 Stewart Avenue, Brooklyn, New York

December __, 2008

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2008 Best Choice Trading Corporation)

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 September 9, 2008, and a certain Lease Agreement, dated as of December 1, 2008 (the "Lease Agreement"), between the Agency and LGF Realty LLC, a New York limited liability company (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition, construction and renovation of an approximately 8,749 square foot building on an approximately 9,284 square foot parcel of land located at 150 Stewart Avenue, Brooklyn, New York (the "Facility"), all for use in the warehousing and refrigeration of wholesale seafood (the "Project"), for use and occupancy by the Company and its permitted sublessee, Best Choice Trading Corporation, a New York corporation (the "Sublessee").

3. In connection with such resolution, 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 acquisition, construction and 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 construction and 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 _____, a New York limited liability company [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency in connection with a certain project of the Agency for the Agent being the acquisition construction and renovation of a warehousing facility (the "Facility"), consisting of the acquisition, construction and renovation of an approximately 8,749 square foot building on an approximately 9,284 square foot parcel of land located at 150 Stewart Avenue, Brooklyn, New York, all for use in the refrigeration and warehousing of wholesale seafood (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.

[Remainder of this Page 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:

LGF REALTY LLC

By: _____
Name:
Title:

BEST CHOICE TRADING CORPORATION

By: _____
Name:
Title:

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 to 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 LGF REALTY 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 December 1, 2008 (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 are ready for occupancy, use and operation for its intended purposes;

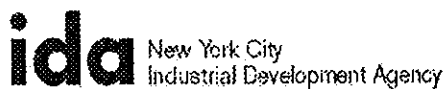
(vi) this Certificate is given without prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate; and

(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 _____

LGF REALTY LLC

By: _____
Name:
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? Yes No
Do the Company and its Affiliates offer health benefits to all Part-Time Employees? Yes No

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.~~

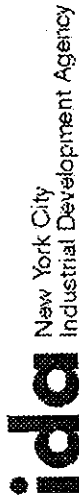
Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed 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>.

SUBTENANT OCCUPANCY SURVEY

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

As of December 31, 20__



PROJECT COMPANY: _____ PROJECT LOCATION: _____

	<u>Occupant</u>	Name of Occupant's <u>Principal</u>	Square Footage <u>Occupied</u>	Affiliate Relationship to <u>Company, if any</u>	Date Occupancy <u>Began</u>	Date Occupancy <u>Will End</u>
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

_____ square feet

TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: _____

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.

Title: _____

Date: _____

Email: _____

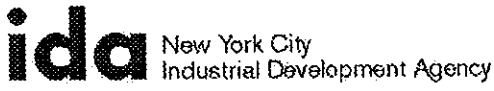
Signature: _____

Phone Number: _____

(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@nyceda.com



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 (Pilot, Sales Tax, etc.)
-----------------	-------	---------	----------	--

* 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 December 1, 2008 between the Agency and LGF Realty 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, joint 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

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 4th day of December, in the year 2008

BETWEEN Dimension Realty Partners, a New York Partnership having offices at 517 Stagg Street, Brooklyn New York 11237

party of the first part, and LGF Realty LLC, a New York Corporation having offices at 146 Stewart Avenue, Brooklyn, New York 11237

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

ten dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, County of Kings, and bounded and described as set forth on Schedule A, attached hereto.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

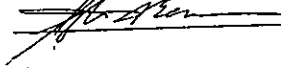
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Dimension Realty Partners

By: Steven Berman, General Partner



TITLE NUMBER: PIO-0806063

SCHEDULE A

(LEGAL DESCRIPTION)

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

BEGINNING at a point on the Easterly side of Stewart Avenue, distant 110 feet 4 inches Northerly from the intersection formed by the Easterly side of Stewart Avenue and the Northerly side of Meserole Street;

THENCE Easterly on a line parallel to Meserole Street and part of the distance through a party wall, 159 feet 2 5/8 inches to the Westerly line of Tax Lot 20 in Block 2964 in the Borough of Brooklyn on the Tax Map of the City of New York;

THENCE RUNNING Northerly and along the Westerly side of said Tax Lot 20 and on a curve having a radius of 423 feet, a distance of 12 feet 9 1/8 inches;

THENCE continuing along the Westerly side of said Tax Lot 20 on a line parallel to the Westerly side of Gardner Avenue, 45 feet 7 inches;

THENCE Westerly on a line parallel with Meserole Street and part of the distance through a party wall, 158 feet 9 inches to the Easterly side of Stewart Avenue;

THENCE Southerly and along the Easterly side of Stewart Avenue 58 feet 4 inches to the point or place of **BEGINNING**.

PREMISES being and intended to be the same as those conveyed in deed recorded in Reel 1963 Page 357.

FOR INFORMATION ONLY:

Premises are also known as:

County:	Kings
Block:	2964
Lot:	50
Address:	150 Stewart Avenue, Brooklyn, NY 11237

Pioneer Abstract Services Corp.
254 Canal Street, Suite 2002A
New York, NY 10013
Tel: (212)625-1888 Fax: (212)925-2226

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of New York, ss:

On the 11 day of Dec in the year 2008, before me, the undersigned, personally appeared

STEVEN BOGMAK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Linda Hall
LINDA HALL
Notary Public, State of New York
No. 01HA5072988
Qualified in Nassau County
Commission Expires February 24, 2011

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE


State of New York, County of _____, ss:
On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)
to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Bargain and Sale Deed With Covenants

Title No.

Dimension Realty Partners
TO
LGF Realty LLC

DISTRIBUTED BY

YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of _____, County of _____, ss:
*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the _____ day of _____ in the year _____, before me the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION:
BLOCK: 2964
LOT: 50
COUNTY OR TOWN: Kings

RETURN BY MAIL TO:

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 4th day of December, in the year 2008

BETWEEN Dimension Realty Partners, a New York Partnership having offices at 517 Stagg Street, Brooklyn New York 11237

party of the first part, and LGF Realty LLC, a New York Corporation having offices at 146 Stewart Avenue, Brooklyn, New York 11237

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

ten dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City and State of New York, County of Kings, and bounded and described as set forth on Schedule A, attached hereto.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

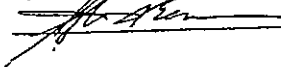
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Dimension Realty Partners

By: Steven Berman, General Partner



TITLE NUMBER: PIO-0806063

SCHEDULE A

(LEGAL DESCRIPTION)

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

BEGINNING at a point on the Easterly side of Stewart Avenue, distant 110 feet 4 inches Northerly from the intersection formed by the Easterly side of Stewart Avenue and the Northerly side of Meserole Street;

THENCE Easterly on a line parallel to Meserole Street and part of the distance through a party wall, 159 feet 2 5/8 inches to the Westerly line of Tax Lot 20 in Block 2964 in the Borough of Brooklyn on the Tax Map of the City of New York;

THENCE RUNNING Northerly and along the Westerly side of said Tax Lot 20 and on a curve having a radius of 423 feet, a distance of 12 feet 9 1/8 inches;

THENCE continuing along the Westerly side of said Tax Lot 20 on a line parallel to the Westerly side of Gardner Avenue, 45 feet 7 inches;

THENCE Westerly on a line parallel with Meserole Street and part of the distance through a party wall, 158 feet 9 inches to the Easterly side of Stewart Avenue;

THENCE Southerly and along the Easterly side of Stewart Avenue 58 feet 4 inches to the point or place of **BEGINNING**.

PREMISES being and intended to be the same as those conveyed in deed recorded in Reel 1963 Page 357.

FOR INFORMATION ONLY:

Premises are also known as:

County: Kings
Block: 2964
Lot: 50
Address: 150 Stewart Avenue, Brooklyn, NY 11237

Pioneer Abstract Services Corp.
254 Canal Street, Suite 2002A
New York, NY 10013
Tel: (212)625-1888 Fax: (212)925-2226

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of New York, ss:

On the 11 day of Dec in the year 2008, before me, the undersigned, personally appeared

Steven Barman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature of Linda Hall]

LINDA HALL
Notary Public, State of New York
No. 01HA5072968
Qualified in Nassau County
Commission Expires February 24, 2011

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:
On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)


to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

Bargain and Sale Deed
With Covenants

Title No.

Dimension Realty Partners
TO
LGF Realty LLC

DISTRIBUTED BY

YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of _____, County of _____, ss:
*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the _____ day of _____ in the year _____, before me _____ the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION:
BLOCK: 2964
LOT: 50
COUNTY OR TOWN: Kings

RETURN BY MAIL TO: