

EXECUTION COPY

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

AND

BROWN BROTHERS HARRIMAN & CO.

LEASE AGREEMENT (140 BROADWAY)

Affecting the leasehold more particularly described in Appendix B hereto located at 140 Broadway, in the County of New York, City and State of New York which is also known as Block 48, Lot 1, on the official Tax Map of New York County

Dated as of May 1, 2002

New York City Industrial Development Agency
(Brown Brothers Harriman & Co. Project)

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LEASE AGREEMENT

THIS LEASE AGREEMENT (140 BROADWAY), made and entered into as of May 1, 2002, 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 **BROWN BROTHERS HARRIMAN & CO.**, a limited partnership organized and existing under and by virtue of the laws of the State of New York, having offices at 59 Wall Street, New York, New York 10005 (the "Company"), party of the second part (capitalized terms used but not defined in the recitals to this Agreement shall have the respective meanings assigned such terms in Appendix A hereto):

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, 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 Act, the Agency was established for the benefit of The City of New York (the "City") and the inhabitants thereof;

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company and/or Eligible Affiliates to acquire and install Facility Improvement Materials and tangible personal property in, and renovate and upgrade certain space leased by the Company in such building located at 140 Broadway, New York, New York, all for use by the Company and/its Eligible Affiliates as general office space for the Company Business by the Company and its subsidiaries (the "Project"), and in furtherance of said purpose, the Agency adopted the Resolution authorizing the Project; and

WHEREAS, the Company has advised each of the Agency and the appropriate officials of the City as follows: that as of the Inducement Date, the Company employed approximately 810 persons at its offices within the City; that the Company currently leases approximately 269,000 square feet of office space at two separate locations in the City; that in analyzing its space requirements the Company had considered the alternative of relocating 372 jobs to facilities in New Jersey; and that there would have been a significant cost advantage to the Company to relocate such employees and operations to New Jersey; and

WHEREAS, the Company then entered into negotiations with representatives of the City and the Agency and, as a result thereof, the Company was offered a package of economic development incentives which reduced the financial gap between relocating its operations and remaining in the City; and that as a result thereof, the Company has determined to consolidate its operations and corporate headquarters in New York, New York, and thereby proceed with the Project, as hereinafter defined, with the projected growth of 680 jobs and the retention of approximately 770 jobs within the City; and

WHEREAS, simultaneously with the execution of this Agreement, the Company has entered into an Company Lease Agreement (the "Company Lease"), dated as of May 1, 2002, between the Agency and the Company pursuant to which the Company has subleased its leasehold interest in the Project Premises (Facility Improvements) to the Agency;

WHEREAS, simultaneously with the execution of this Agreement, the Agency and the Company have entered into the Project Agreement of even date herewith pursuant to which the Company has undertaken certain additional obligations, covenants and agreements with the Agency; and

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

ARTICLE I
Definitions and Representations

Section 1.1. Definitions. Terms not otherwise defined herein shall have the meanings assigned to them in Appendix A hereto.

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

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

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

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, 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.

(e) Except as otherwise provided in this Agreement, all approvals, consents and acceptances required to be given or made by any Person or party hereunder shall be at the sole discretion of the Person or party whose approval, consent or acceptance is required.

Section 1.3. Representations and Warranties by Agency. The Agency makes the following representations and warranties as of the date hereof:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, is authorized and empowered to enter into and effectuate the transactions contemplated on its part by this Agreement and the Company Lease and has taken all requisite action to carry out its obligations hereunder and thereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement and the Company Lease.

(b) The execution, delivery and performance of this Agreement, the Company Lease and each other Project Document to which it is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on its part and will not violate any provision of law, any order of any court or agency of government, or its by-laws, or any material indenture, agreement or other instrument to which it 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 material indenture, agreement or other instrument.

(c) Assuming due and proper execution hereof and thereof by the Company, this Agreement, the Company Lease and each other Project Document to which it is a party, constitute the Agency's legal, valid and binding obligation enforceable against it in accordance with its terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights from time to time in effect and general principles of equity.

(d) There is no action or proceeding pending or, to the best knowledge of the Agency and of its officers having reason to be familiar with any such action or proceeding, threatened by or against it by or before any court or administrative agency that might materially and adversely affect its ability to perform its obligations under this Agreement, the Lease Agreements and each other Project Document to which it is a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the date hereof in connection with the execution and delivery of this Agreement, the Lease Agreements and each other Project Document to which it is a party, or in connection with the performance of its obligations hereunder and thereunder, have been obtained.

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement, and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the financing of all or a portion of the costs of the Facility Improvement Project by the Agency and the providing of certain benefits to the Company in connection therewith is reasonably necessary to discourage the Company from relocating 372 jobs to facilities in New Jersey and to encourage the Company to proceed with the Project and retain approximately 770 Eligible Employees (as defined in the Project Agreement) and create approximately 680 new jobs within the City, and is reasonably necessary to preserve the competitive position of the Company in its industry.

Section 1.5. Representations and Warranties by the Company. In order to induce the Agency to enter into those Project Documents to which the Agency is a party, the Company makes the following representations and warranties:

(a) The Company is a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, has the requisite 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 Project Document to which it is a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Company is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Company and will not violate any provision of law in any material respect, any order of any court or agency of government, or the certificate of partnership or partnership agreement of the Company, or any material indenture, agreement or other instrument to which the Company is a party or by which the Company or any of its property is subject to or bound, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any such material indenture, agreement or other instrument.

(c) The assistance of the Agency pursuant to the terms hereof and the terms of the Sales Tax Letter is reasonably necessary to induce the Company to proceed with the Project.

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

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

(f) The Project Premises (Facility Improvements) is a portion of the premises demised to the Company under the Prime Lease.

(g) Assuming due and proper execution thereof by the Agency, this Agreement, the Lease Agreements and each other Project Document to which the Company is a party, constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights from time to time in effect and general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(h) There is no action or proceeding pending or, to the best knowledge of the Company and of those of its officers having reason to be familiar with any such action or proceeding, threatened by or against the Company by or before any court or administrative agency that might materially and adversely affect the ability of the Company to perform its obligations under this Agreement and each other Project Document to which the Company is a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Company is a party or in connection with the performance of the obligations of the Company hereunder and thereunder have been obtained except as such would not have a material effect on the Company's performance hereunder or thereunder.

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

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

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

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

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

(n) As of the May 20, 2002, the number of Eligible Employees (as defined in the Project Agreement) within the City is 774. As of the Inducement Date, the number of Eligible Employees (as so defined) within the City was 810.

(o) No more than 20% of the Project Premises (Facility Improvements) is or will be primarily used in making retail sales to customers who personally visit the Project Premises (Facility Improvements) (and no sales or use tax exemption has been or will be made available therefor under the Sales Tax Letter). For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

(p) The execution, delivery and performance of this Agreement and of the Lease Agreements by the Company does not constitute a breach, default or violation of the terms of the Prime Lease by the Company, nor does it require any consent of the Overlandlord (140 Broadway) which consent has not been obtained prior to the date hereof.

(q) The fiscal year of the Company shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31.

(r) The total square footage of the Project Premises (Facility Improvements) will be approximately 352,000 square feet.

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

ARTICLE II
The Project

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

(b) The Company shall be responsible for the payment of (i) all of the reasonable costs and expenses in connection with the preparation of any instruments of conveyance of the Company's leasehold interest in the Project Premises (Facility Improvements) and Facility Improvement Materials to the Agency, and the delivery of any such instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable in connection with such conveyance, if any, and (iii) shipping and delivery charges and all other reasonable expenses or claims incurred by or on behalf of the Company in connection with the Facility Improvement Project.

(c) The Agency and the Company acknowledge and agree that the Facility Improvement Materials are to be acquired, leased, equipped, installed, maintained, replaced and repaired for use at the Project Premises (Facility Improvements) and that the nature thereof, all as comprising the Facility Improvement Project, may change from time to time over the term of this Agreement to reflect amendments, modifications, replacements, accessions to and supplements made to the Facility Improvement Project. Upon the acquisition, leasing, subleasing, equipping, furnishing, installation, maintenance, repair or replacement of the Project Property (Facility Improvements), such property shall become subject to the leasehold interest of this Agreement.

(d) The Company will obtain or cause to be obtained all necessary approvals, permits, authorizations and licenses from appropriate authorities (except such approvals, permits, authorizations and licenses as only the Overlandlord shall have legal standing to obtain) authorizing the operation and use of the Project Premises (Facility Improvements) for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof, all of which will be done in compliance in all material respects with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance required to be maintained hereunder and under the Prime Lease with respect to the Project Premises (Facility Improvements).

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

expenses incurred in such recovery, shall be paid to the Company or the Overlandlord pursuant to the provisions of the Prime Lease.

(f) Concurrently with the execution of this Agreement, the Agency shall make available to the Company the Sales Tax Letter.

(g) The Company and the Agency agree that title to (or a leasehold or licensee's interest in, as appropriate) all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Project Property (Facility Improvements) (excluding Company Property) shall vest in the Agency immediately upon the execution by the Company as agent for the Agency of a contract, lease, bill, invoice or purchase order therefor, subject, however to the Overlandlord's interest therein pursuant to the Prime Lease. The Company shall take all action reasonably necessary to protect such title or leasehold interest of the Agency against claims of any third parties, provided the Company shall not be required to purchase title insurance with respect thereto.

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

(i) Except as provided in Sections 6.1 and 9.2 hereof, the Company covenants that no person other than the Company and Eligible Affiliates will use or operate any of the Project Property (Facility Improvements) except for incidental use in connection with the Company Business or in connection with repair or maintenance thereof.

Section 2.2. Commitment to Project. The Company unconditionally covenants and agrees that it will, from time to time and in the ordinary course of its business, proceed with the acquisition and installation of Project Property (Facility Improvements), all on behalf of and as agent for the Agency, and all in accordance with this Agreement, the Sales Tax Letter and the Project Agreement.

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

ARTICLE III

Sub-sublease of Project Property (Facility Improvements) and Facility Improvements

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

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Lease Commencement Date and shall expire on the earlier of April 30, 2022 or such earlier date as this Agreement may be terminated as hereinafter provided (the period between such dates constituting the "Term"). The Agency hereby delivers to the Company and the Company hereby accepts such possession of the Project Property (Facility Improvements) as the Agency has or may have.

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

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

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

Section 3.4. Obligation of the Company Unconditional. The obligation of the Company to pay the amounts due pursuant to Sections 3.3, 7.2 and 8.1 hereof, the obligation of the Company to pay all other payments provided for in this Agreement and to maintain the Project Property (Facility Improvements) and the Project Premises (Facility Improvements) in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person whatsoever. For so long as this Agreement remains in effect, the Company will not suspend or discontinue any

such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or assign any obligation of the Company under this Agreement, except as provided in this Agreement, or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

ARTICLE IV
Maintenance, Taxes
and Insurance

Section 4.1. Maintenance, Alterations and Improvements. (a) Subject to Section 4.1 of the Project Agreement, during the term of this Agreement, the Company will keep or cause the Overlandlord to keep in accordance with the Prime Lease, the Project Property (Facility Improvements) and the Project Premises (Facility Improvements) in good and safe operating order and condition, ordinary wear and tear excepted, will occupy the Project Premises (Facility Improvements), will use and operate the Project Property (Facility Improvements) and the Project Premises (Facility Improvements) in the manner for which they were designed and intended and will make or cause the Overlandlord to make in accordance with the Prime Lease, all replacements and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continuity of the operations of the Company for the purposes contemplated by this Agreement and the Project Agreement. All replacements and repairs effected by the Company shall be performed in a good and workmanlike manner and be made and installed in compliance with the requirements, if any, of all governmental bodies and the Company shall use reasonable efforts to cause all replacements and repairs effected by Overlandlord to be so performed. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Property (Facility Improvements), to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Property (Facility Improvements), or to furnish any utilities or services for the Project Property (Facility Improvements) and the Company hereby agrees that, as between the Company and the Agency, the Company assumes full responsibility therefor.

(b) The Company shall have the right to make such alterations or to furnish any utilities or services for the Project Property (Facility Improvements) and to make such replacements, or repairs of, or additions to, the Project Property (Facility Improvements) 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) the continuity of the operation of the Company Business by the Company and/or Eligible Affiliates at the Project Premises (Facility Improvements) is not materially impaired for longer than reasonably necessary, (ii) such additions, alterations, replacements or repairs are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements (as defined in Section 4.6 hereof), (iii) such additions, alterations, replacements or repairs are promptly and fully paid for by the Company (or the Overlandlord in accordance with the Prime Lease) in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Property (Facility Improvements) shall at all times be free of any mortgage, lien, charge, encumbrances, security interest or claim other than Permitted Encumbrances, (iv) title thereto or a leasehold interest therein shall be deemed to be vested in the Agency, and (v) such additions, alterations, replacements or repairs do not change the nature of the Project Property (Facility Improvements) so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act for use for the general purposes specified in the recitals to this Agreement. All alterations of, substitutions for, replacements of and additions to the Project Property (Facility Improvements) shall be deemed to constitute a part of the Project Property (Facility Improvements) and, subject to this Agreement, title to, or leasehold interest in, such property shall automatically vest in the Agency free and clear of all liens, charges, encumbrances, security interests or claims (other than Permitted Encumbrances) immediately upon installation or

incorporation in the Project Premises (Facility Improvement) or payment therefor, whichever shall first occur.

(c) The Company shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed at any Approved Company Location tenant improvement work and machinery and equipment, including, without limitation, telecommunications equipment, data processing equipment and trade fixtures installed by the Company, and all furnishings and other personal property (the "Company Property") with respect to which no sales or use tax exemption shall have been received pursuant to the Sales Tax Letter or otherwise constituting the Project Property (Facility Improvements) or Facility Equipment without conveying title to or any leasehold interest in such property to the Agency nor subjecting such property to this Agreement. The Agency shall not be responsible for any loss of or damage to the Company Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company Property.

(d) The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Property (Facility Improvements) or any part thereof, or the interest of the Company in the Project Property (Facility Improvements) or this Agreement, except for Permitted Encumbrances and except as provided in Section 6.6 hereof.

(e) The Company may, at its sole cost and expense, contest (with written notice thereof to be sent to the Agency promptly following commencement of such contest) by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any payment to a contractor installing Facility Improvements or making renovations to the Project Premises (Facility Improvements), if (1) neither the Project Premises (Facility Improvements) nor any material portion thereof, or any interest therein, would be in any danger of being sold, forfeited or lost, and (2) such contest shall not result in any of the Company, the Eligible Affiliates or the Agency being in any danger of any criminal liability, and (3) such contest shall not result in any of the Company, the Eligible Affiliates or the Agency being in any danger of any material civil liability.

Section 4.2. Removal of Project Property (Facility Improvements). (a) The Company hereby represents, warrants and covenants to and with the Agency that none of the Facility Improvements or machinery, equipment or other property constituting part of the Project Property (Facility Improvements) (the "Current Project Property (Facility Improvements)") will ever be acquired, leased or licensed for any purpose other than for installation and use at an Approved Company Location for use in the Company Business nor, except as permitted below in this Section 4.2, will any of the Current Project Property (Facility Improvements) ever be removed from Approved Company Locations to a location not constituting an Approved Company Location (either on a temporary or permanent basis) prior to the expiration of three (3) years after the installation or location of the respective item of Current Project Property (Facility Improvements) at an Approved Company Location (the "Retention Period"), unless such removal is to another Approved Company Location or unless simultaneously with such removal either (i) an amount equal to the sales tax that would have been payable at the original time of such purchase with respect to the purchase of such item (but based upon its fair market value at the time of its removal), but for the Sales Tax Letter, shall be paid by the Company to the Tax Collecting Entity with respect to the item or items being removed; or (ii) unless the provisions of Section 4.2(b) or (c) below shall apply and have been

complied with by the Company, there shall be delivered to the Agency a certificate of an Authorized Representative of the Company stating that such item of the Current Project Property (Facility Improvements) is obsolete or useless, or the Company has a good faith operational or business reason for such removal, in relation to the conduct of the Company Business within the City (in which event the provisions of Sections 4.2(b) and (c) below shall be inapplicable). After the expiration of the Retention Period, the Company may remove, transfer, sell or dispose of any item of Current Project Property (Facility Improvements) from Approved Company Locations. In no event, however, will the Company cause the removal, transfer, sale or disposition of Facility Equipment constituting Current Project Property (Facility Improvements) from Approved Company Locations such that the original cost of the remaining Facility Equipment constituting Current Project Property (Facility Improvements) or personal property which previously constituted Facility Equipment shall be less than \$1,000,000.

(b) Prior to the expiration of the Retention Period as to any item of Current Project Property (Facility Improvements), the Company may remove such item from Approved Company Locations on a temporary basis ("Temporary Removals"); provided, that no such Temporary Removal shall be effected if:

(i) an Approved Company Location ceases to be the "permanent location" to which the item of Current Project Property (Facility Improvements) is to be returned after its temporary off-location use or repair,

(ii) the Temporary Removal is not effected for a good faith business purpose consistent with the Company Business conducted by the Company and Eligible Affiliates at an Approved Company Location, and

(iii) the item of Current Project Property (Facility Improvements) is to be absent from an Approved Company Location for a period in excess of ninety (90) days, subject, however, to any delays as a result of Force Majeure.

Notwithstanding the limitations set forth in paragraph (iii) above, upon the occurrence of an unforeseen event or of any circumstance that, in the good faith business judgment of the Company, has precipitated an emergency condition necessitating the extension of the 90-day Temporary Removal period referred to in clause (iii) above, such Temporary Removal period may be extended for the period of, but not longer than, such emergency condition; provided, that the Company delivers written notice to the Agency of the event or circumstance precipitating such emergency condition, and uses good faith diligent efforts to effect the return of the item of Current Project Property (Facility Improvements) to an Approved Company Location as expeditiously as possible under the circumstances.

(c) Prior to the expiration of the Retention Period as to any item of Current Project Property (Facility Improvements), the Company may remove, transfer, sell or otherwise dispose of such item from an Approved Company Location on a permanent basis ("Permanent Removals") and thereby acquire such item of Current Project Property (Facility Improvements) from the Agency; provided that

(i) the Company shall acquire for installation at or location in an Approved Company Location a substitute or replacement item of property (the "Substitute

Property”) having equal or greater utility and capability (or having a comparable lesser utility or capability if the business needs of the Company have changed) as the item of Current Project Property (Facility Improvements) being permanently removed from an Approved Company Location (the “Removed Property”), in which case title to such substitute or replacement item of property shall automatically belong to the Agency as part of the Project Property (Facility Improvements); provided, however, the Substitute Property shall not be acquired through the use of the Sales Tax Letter (and the utilization of Sales Tax Savings) if the Removed Property shall have been removed for use at a facility of the Company or any Affiliate thereof outside of the City; or

(ii) if the Company shall seek to effect a Permanent Removal of Current Project Property (Facility Improvements) for reasons other than as permitted in Section 4.2(c)(i) above, and such Permanent Removal is effected in accordance with a good faith business purpose on the part of the Company and not as part of any systematic or programmatic transfer of Current Project Property (Facility Improvements) from an Approved Company Location, the Company may on an occasional and immaterial basis effect such Permanent Removal; provided, that prior to any such Permanent Removal the Company shall deliver (y) to the Agency, a certificate of an Authorized Representative of the Company confirming that such Permanent Removal is being effected in a manner and for a purpose consistent with the conditions permitting such Permanent Removal as provided above in this Section 4.2(c)(ii) and not in violation of any other covenant, condition or agreement on the part of the Company hereunder, and (z) to the Tax Collecting Entity an amount, certified as correct by an Authorized Representative of the Company, of the sales tax that would have been payable at the time of original purchase based upon the fair market value thereof at the time of its removal (but only to the extent, if any, that the aggregate of such amounts with respect to Permanent Removals effected during the same calendar year in which such removal is effected shall exceed \$500,000).

(d) Notwithstanding the foregoing,

(i) the Company shall effect no Temporary Removals or Permanent Removals of Current Project Property (Facility Improvements) from an Approved Company Location if any such removal would change the nature of the Project Property (Facility Improvements) as a commercial facility and as a qualified “project” as defined in and as contemplated by the Act, and

(ii) the title to each item of Facility Equipment shall be deemed automatically conveyed by the Agency to the Company (or to such other Eligible Affiliate as the Company shall direct the Agency in writing), and such item of property shall no longer constitute Project Property (Facility Improvements), on the earliest of (x) the date upon which such item shall have been removed from an Approved Company Location in compliance with the terms of this Agreement, (y) the day following the third anniversary of that date upon which the item of Facility Equipment shall have been paid for or installed at an Approved Company Location, or (z) that day upon which the item of Facility Equipment shall have been removed from an Approved Company Location in violation of the provisions of this Section 4.2 (and in which latter event, the Company shall be obligated to make payments to the Agency as provided herein); provided, however, no such automatic conveyance shall be deemed to have occurred (A) if such conveyance would cause the

Company to be in violation of the provisions of the last sentence of Section 4.2(a) hereof, or (B) with respect to any item of Current Project Property (Facility Improvements) for so long as a Maintenance Contract shall be in effect with respect thereto.

(e) The removal from an Approved Company Location of any Current Project Property (Facility Improvements) pursuant to the provisions of this Section 4.2 shall not entitle the Company to any abatement or reduction in the amounts payable by the Company under this Agreement or any other Project Documents.

(f) Subject to compliance with the foregoing provisions of this Section 4.2, the Company shall be authorized to act as agent of the Agency in effecting any trade or exchange of Current Project Property (Facility Improvements) for a new item of property to thereby constitute Project Property (Facility Improvements).

Section 4.3. Taxes, Assessments and Charges. (a) Subject to Section 4.3(b) hereof and the terms of the Prime Lease, the Company shall pay, or cause to be paid, when the same shall become due and payable, all taxes (except sales and use taxes subject to the exemptions provided in the Sales Tax Letter in accordance therewith and herewith and as provided in the Project Agreement), assessments, governmental charges and impositions, general and specific, whether foreseen or unforeseen, ordinary or extraordinary, under any present or future law, which may be levied and assessed upon or against the estate or interest of the Agency or the Company in the Project Premises (Facility Improvements) or other amounts payable hereunder during the term of this Agreement but only to the extent that (i) the foregoing are the obligations of the Company under the Prime Lease and (ii) such amounts are not being contested by the Company in good faith in accordance with the terms hereof.

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

For purposes of this Section 4.3 the term "Imposition" shall mean all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project Premises (Facility Improvements), and all water and sewer charges, special district charges, assessments, Business Improvement District charges and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project Premises (Facility Improvements). The term Impositions shall not include sales and use taxes to the extent exemptions from such taxes are claimed in accordance with the Sales Tax Letter.

(c) In addition, in the event the Project Premises (Facility Improvements) or any portion thereof is exempt from Impositions (other than Sales and Use Taxes, as defined in the Project Agreement) solely due to the Agency's interest in the Project Premises (Facility Improvements), the Company shall promptly pay or cause to be paid all such Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Company under the Prime Lease if the Agency had no such interest in the Project Premises (Facility Improvements).

(d) The Company may at its sole cost and expense and in good faith commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any Imposition (upon prior written notice to the Agency) provided that, (i) if the Company withholds payment, such proceeding shall suspend the execution or enforcement of any Lien arising from the non-payment of such Imposition against the Project Premises (Facility Improvements) or any part thereof or any interest therein or in this Agreement or the Company Lease or the Agency or against any of the rentals or other amounts payable under this Agreement, the Company Lease or the Project Agreement, (ii) neither the Project Premises (Facility Improvements) nor any material portion thereof or interest therein would be in any danger of being sold, forfeited or lost, (iii) neither the Company nor the Agency would be in danger of any criminal liability for failure to pay such Imposition, and (iv) neither the Company nor the Agency would be in any danger of any material civil liability for failure to pay such Imposition other than normal accrual of interest for failure to comply therewith, provided that the Company agrees to pay any such interest accruals with respect thereto.

Section 4.4. Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of improvement, construction, reconstruction or renovation of the Project Premises (Facility Improvements), the Company shall maintain or cause to be maintained insurance with respect to the Project Property (Facility Improvements), with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Company and the Agency in a minimum amount of \$10,000,000 aggregate coverage for personal injury and property damage;

(ii) Builders' All Risk insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Project Property (Facility Improvements), and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the improvements and betterment, facilities, fixtures and other property constituting a part of the Project Property (Facility Improvements) against loss or damage to the Project Property (Facility Improvements) by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, exposing and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Company or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Project Property (Facility Improvements) as determined by a qualified insurance appraiser or insurer (selected by the Company and approved by the Agency) not less often than once every year, at the expense of the Company; any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company, but if the net worth of the Company shall be less than \$200,000,000 then such deductible shall not exceed \$50,000;

(iii) Property damage insurance insuring the systems, machinery, equipment, facilities, fixtures and other property constituting a part of the Project Property (Facility Improvements) against loss or damage to the Project Property (Facility Improvements) by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Company or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Project Property (Facility Improvements) as determined by a qualified insurance appraiser or insurer not less often than once a year, at the expense of the Company; any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company but if the net worth of the Company shall be less than \$200,000,000 then such deductible shall not exceed \$50,000;

(iv) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project Property (Facility Improvements) and the business thereby conducted in a minimum amount of \$10,000,000 which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof (other than under Section 6.2(c) hereof to the extent not commercially reasonably available to the Company), and (B) may be effected under overall blanket or excess coverage policies of the Company or any Eligible Affiliate thereof, provided, however, that at least \$500,000 is effected by a comprehensive liability insurance policy; any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company, but if the net worth of the Company shall be less than \$200,000,000 then such deductible shall not exceed \$50,000;

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

(vi) Such other customary insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) All insurance required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "XIII/A" or better by AM. Best & Co., or (ii) approved by the Agency (such approval not to be unreasonably withheld).

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

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

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

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

(iv) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding: (w) any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Company or any other Person; (x) the operation or use of the Project Property (Facility Improvements) for purposes more hazardous than permitted by the terms of the policy; (y) any foreclosure or other proceeding or notice of sale relating to the Project Property (Facility Improvements); or (z) any change in the title to or ownership of all or any portion of the Project Property (Facility Improvements);

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

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

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

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

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

(e) On the Lease Commencement Date, the Company shall deliver or cause to be delivered to the Agency policies, binders or certificates of insurance evidencing compliance with the insurance requirements of this Section 4.4. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Company shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.4. The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 would or might be suspended or impaired.

(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 BUSINESS OR INTERESTS OF THE COMPANY OR ANY OTHER PERSONS.

Section 4.5. Advances by Agency. In the event the Company fails to make any payment or fails to perform or observe any obligation required of it under this Agreement, the Agency, after first delivering ten (10) Business days' prior written notice to the Company of any such failure on its part (except in the event of an emergency condition which, 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, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum from the date advanced, shall be paid by the Company promptly upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.6. Compliance with Law. (a) The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, and subject to the provisions of Section 4.6(b) below, use and operate the Project Premises (Facility Improvements) in compliance (or promptly use good faith diligent efforts to cause all of their subtenants, users and operators to use and operate the Project Premises (Facility Improvements) in compliance) in all material respects with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, whether ordinary or extraordinary (the "Legal Requirements"). Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Overlandlord with any Legal Requirement: (i) if the Overlandlord is required, or the Company reasonably believes the Overlandlord is required, under the terms of the Prime Lease to comply with such Legal Requirement, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (ii) if such non-compliance is the result of any action or failure to act on the part of the Overlandlord (which action or failure to act is not a breach

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

(b) The Company may contest in good faith the validity, existence or applicability of any Legal Requirement if (i) such contest shall not result in the Project Premises (Facility Improvements) or any material part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Agency or the Company being in any reasonable danger of criminal liability, (iii) such contest shall not result in the Company, or the Agency being in any reasonable danger of any material civil liability other than normal accrual of interest for failure to comply therewith, provided that the Company or the Overlandlord agrees to pay any interest accrual with respect thereto, (iv) the Company or the Overlandlord shall conduct such proceedings or contest or dispute diligently and in good faith and (v) the Company shall keep the Agency advised as to the status of such proceedings or contest or dispute. If the Company or the Overlandlord shall contest any Legal Requirement(s) and the Company so requests the Agency, the Agency, at the sole cost and expense of the Company, will reasonably cooperate in such contest to the extent that such cooperation is necessitated by reason of the Agency's leasehold interest in the Project Premises (Facility Improvements).

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

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

ARTICLE V
Damage, Destruction and Condemnation

Section 5.1. Damage, Destruction and Condemnation. (a) In the event that at any time during the term of this Agreement the whole or part of the Project Premises (Facility Improvements) shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Company and the Overlandlord, or if the temporary use of the Project Premises (Facility Improvements) 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 Project Premises (Facility Improvements),

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

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

(b) If (i) the Project Premises (Facility Improvements) are damaged, rendered inaccessible, acquired or condemned as a result of a Loss Event such that (1) the Project Premises (Facility Improvements) are untenable, (2) the Overlandlord does not restore the Project Premises (Facility Improvements) during the time period required in the Prime Lease or (3) the Overlandlord or the Company terminates the Prime Lease in accordance with the terms thereof, or if (ii) in excess of fifty percent (50%) of the Project Premises (Facility Improvements) is damaged, destroyed, acquired or condemned as a result of a Loss Event and the Overlandlord or the Company terminates the Prime Lease in accordance with the terms thereof, or if (iii) a Loss Event shall occur such that the whole of the Project Premises (Facility Improvements) shall be acquired or condemned, then, in any of such events, within sixty (60) days of the termination of the Prime Lease, the Company shall deliver written notice of the same to the Agency, in which event this Agreement and the Company Lease shall terminate. Notwithstanding the foregoing, if the Company and the Overlandlord shall determine, following a casualty or condemnation, to amend the Prime Lease to delete from the description of the property demised thereunder the damaged or condemned portion of the Project Premises (Facility Improvements), and to continue the Prime Lease relative to the remainder of the Project Premises (Facility Improvements), then the Company shall so notify the Agency promptly upon the making of such determination, and, provided that this Agreement shall not have been terminated by reason of the occurrence and continuance of an Event of Default hereunder, (A) the abandoned portion of the Project Premises (Facility Improvements) shall be released from this Agreement and the Company Lease but the remainder shall continue to be leased or subleased (as the case may be) under this Agreement and the Company Lease, (B) the Company shall (to the extent the Overlandlord shall not have the obligation under the Prime Lease to replace, repair or restore) pursuant to the provisions of the Prime Lease promptly and diligently replace, repair or restore (or, if appropriate under the Prime Lease, use its best efforts to cause the Overlandlord to promptly and diligently replace, repair or restore) such remainder of the Project Premises (Facility Improvements) (but only to the extent that such remaining Project Premises (Facility Improvements) shall be functionally adequate or shall be capable of being restored to a tenantable condition) to substantially the same condition it was in immediately prior to the Loss Event, or to a condition of at least

equivalent utility, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and (C) the Company shall not by reason of payment of any such costs of replacement, repair or restoration be entitled to any reimbursement from the Agency, nor shall the amounts payable by the Company under this Agreement be abated, postponed or reduced.

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

(c) All rebuilding, replacements, repairs or restorations of the Project Premises (Facility Improvements) by the Company (or the Overlandlord, as the case may be) in respect of or occasioned by a Loss Event shall

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

(ii) be effected only if the Company shall deliver to the Agency an Opinion of Counsel reasonably acceptable to the Agency to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Project Premises (Facility Improvements) as a qualified "project" as defined in the Act, and

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Company or the Overlandlord, as the case may be, 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 Project Premises (Facility Improvements) shall be evidenced to the Agency by a certificate of an Authorized Representative of the Company, stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for, (iii) that the Project Premises (Facility Improvements) has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and valid title to all property constituting part of the Project Premises (Facility Improvements) and all property of the Project Premises (Facility Improvements) is subject to this Agreement and the Company Lease, subject to Permitted Encumbrances, and (v) that the restored Project Premises (Facility Improvements) 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 of the Company against third parties which exist at the date of such certificate or which 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 Company will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Project Premises (Facility Improvements) 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 Project Premises (Facility Improvements) any mechanic's, materialmen's or

any other lien in connection with the rebuilding, replacement, repair and restoration of the Project Premises (Facility Improvements) and that there exists no encumbrances on or affecting the Project Premises (Facility Improvements) or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) The Agency and the Company 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 Company, be subject to the approval of the Company.

(f) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Project Premises (Facility Improvements) shall be taken or condemned, or if the taking or condemnation renders the Project Premises (Facility Improvements) unsuitable for use by the Company as contemplated hereby, the Company shall exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

(g) The Company shall be entitled to any insurance proceeds or condemnation award; compensation or damages attributable to the Company Property.

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

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

ARTICLE VI
Particular Covenants

Section 6.1. Dissolution or Merger of the Company; Restrictions on the Company.

The Company hereby covenants and agrees that, at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State of New York and either be organized under the laws of the State of New York or the laws of any other state of the United States and duly qualified to do business in the State of New York, (iii) not liquidate, wind-up, dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (iv) not consolidate with or merge into another limited partnership or another legal entity or permit one or more other legal entities to consolidate with or merge into it. Notwithstanding the provisions of the immediately preceding sentence, the Company may, however, without violating the foregoing, upon prompt written notice to the Agency after the initial public disclosure concerning such transaction, consolidate with or merge into another limited partnership or other legal entity, or permit one or more other legal 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 corporation or other legal entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if (i) the Company or an Eligible Affiliate is the surviving, resulting or transferee legal entity, or (ii) in the event that the Company is not the surviving, resulting or transferee legal entity, such other legal entity (A) is solvent and subject to service of process in the State and duly qualified to do business in the State, (B) is not, nor is it an Eligible Affiliate of, a Prohibited Person, (C) is engaged in the Company Business, (D) assumes in writing all of the obligations of the Company contained in this Agreement and in each other Project Document to which the Company shall be a party, and, in the Opinion of Counsel delivered to the Agency, such corporation or other legal entity shall be bound by all of the terms of this Agreement and of each other Project Document to which the Company shall be a party, and (E) in the opinion of an Independent Accountant (which may take the form of a published financial statement) delivered to the Agency, has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to the lesser of (x) the net worth of the Company immediately prior to such merger, consolidation, sale or transfer or (y) \$200,000,000.

The Company further covenants and agrees that at all times during the term of this Agreement, it is and will continue to be duly qualified to do business in the State, and any corporation or other entity succeeding to the rights of the Company under this Agreement shall be and continue to be duly qualified to do business in the State.

Section 6.2. Indemnity. (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), arising during the term of this Agreement upon, about or in connection with the Project or the Project Property (Facility Improvements) or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project, (ii) the planning, design, acquisition, leasing, licensing, equipping, installation, maintenance, repair or replacement of the Project Property (Facility Improvements) or the Project or any part thereof or the effecting of any work done with respect to the Project Property (Facility

Improvements) or the Project, (iii) failure by the Company or the Overlandlord (or any other Person operating or using the Project Property (Facility Improvements) or any part thereof) to comply with any Legal Requirement; (iv) compliance with any Legal Requirement imposed upon the Company or the Indemnified Parties (v) any defects (whether latent or patent) in the Project Property (Facility Improvements) or the Project or any part of either thereof, (vi) the maintenance, repair, replacement, restoration, renovation, improvement, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting, licensing, sublicensing or operation of the Project Property (Facility Improvements) or the Project or any portion of either thereof, (vii) this Agreement, the Project Agreement, the Sales Tax Letter, or any other Project Document, or other document or instrument required to be 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. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. No Indemnified Party shall be liable for any damage or injury to the person or property of the Company or any Eligible Affiliate or their respective directors, officers, employees, agents or servants or persons under the control or supervision of the Company or such Eligible Affiliate or any other Person who may be about the Project Property (Facility Improvements) or involved with the Project Property (Facility Improvements) or the Project due to any act or negligence of any Person other than, with respect to any such Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, and agrees to indemnify and hold each Indemnified Party harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivisions (i) through (vii) of Section 6.2(a) hereof or at the direction of the Company or any Eligible Affiliate thereof. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action. However, the failure to give such notice in sufficient time shall not constitute a defense hereunder or in any way impair the obligations of the Company under this Section 6.2, if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Company's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (i) the Indemnified Party shall not have timely notified the Company of any such claim or action, (ii) the Company shall not have had knowledge or notice of such claim or action, and (iii) the Company's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Company's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Project Property (Facility Improvements) in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Company's knowledge (without independent inspection except for the transaction screen analysis

provided by the Company to the Agency (the "Environment Report"), the Project Property (Facility Improvements) does not contain any Hazardous Materials which are or have been used in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Property (Facility Improvements) or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, any Eligible Affiliate, or any tenant or subtenant of the Company, a release of Hazardous Materials onto the Project Property (Facility Improvements) or any portion thereof or onto any other property from the Project Property (Facility Improvements) in violation of any environmental law or regulation thereof. The Company shall comply with, and exercise good faith diligent efforts to ensure compliance by Eligible Affiliates and all tenants or subtenants of the Company at the Project Property (Facility Improvements) with all applicable Federal, state and local laws, ordinances, rules and regulations as may relate to the Project Property (Facility Improvements). The Company shall (i) to the extent required under the Prime Lease, use reasonable efforts to cause the Overlandlord in accordance with the Prime Lease to take such action as is necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Project Property (Facility Improvements) (y) in accordance with all applicable Federal, state and local laws, ordinances, rules and regulations, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities (except to the extent contested in good faith and provided the Company shall have provided adequate reserves therefor), and (ii) defend, indemnify, and hold harmless the Agency from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or otherwise at the Project Property (Facility Improvements); (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities made in accordance with environmental laws and regulations, or any requirements of the Agency made in accordance with environmental laws and regulations, 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. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, 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 Authorization Act of 1994, 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. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law, and the indemnifications, releases and hold harmless provisions set forth herein shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the transaction screen analysis is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Company's obligations to carry out and perform all of the covenants stated in Section 4.4 hereof and throughout this Section 6.2, including but not limited to, those covenants wherein the Company is obligated to indemnify the Agency and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under such Indemnified Party's control or supervision.

(e) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the public liability policies required in Section 4.4 hereof, not only its own liability in respect of the matters therein mentioned but also the liability to the Indemnified Parties pursuant to this Section 6.2 provided that the obligation of the Company to provide insurance with respect to its liability under Section 6.2(c) hereof shall be effective only to the extent that such insurance is available on a commercially reasonable basis. Anything to the contrary in this Agreement notwithstanding, the indemnification covenants of the Company contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by any Indemnified Party relating to the enforcement of the provisions herein specified.

(f) For the purposes of this Section 6.2, neither the Company nor any Eligible Affiliate thereof shall be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(g) Notwithstanding any provision herein to the contrary, the indemnifications and protections set forth in this Section 6.2 shall not extend (y) to an Indemnified Party if and to the extent that the loss, damage, injury or liability arises or shall have arisen from the gross negligence or willful misconduct of such Indemnified Party or (z) to the Agency, if (and to the extent that) the loss, damage, injury or liability occurs on, in or about or relates in any way to any portion of the Project Building other than the Project Premises (Facility Improvements) in which the Agency shall have an interest (for reasons other than the Project).

Section 6.3. Compensation and Expenses of Agency. The Company shall pay the reasonable out-of-pocket costs and expenses of the Agency to the extent the same shall constitute Extraordinary Costs of Administration, together with any reasonable fees and disbursements incurred by the Agency's Project Counsel and General Counsel in performing services for the Agency in connection with this Agreement, the Project Agreement, the Sales Tax Letter or any other Project Document.

Section 6.4. Retention of Interest in Project Property (Facility Improvements). The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Project Property (Facility Improvements) or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1, 7.2 and 8.2 hereof,

without the prior written consent of the Company and any purported disposition without such consent shall be void.

Section 6.5. Reimbursement of Sales Tax Savings. (a) The Company hereby represents, warrants and covenants to and with the Agency that if any portion or portions of the Project Premises (Facility Improvements) in excess of thirty-three percent (33%) of the aggregate square footage of the Project Premises (Facility Improvements) (the "Sublet Space") shall be vacated by the Company and subsequently subletted by the Company to a Non-Qualified User within three (3) years of the Lease Commencement Date, the Company shall immediately pay to the Agency the Sales Tax Penalty Amount attributable to any Facility Improvements and/or Facility Equipment located or installed at the Sublet Space.

(b) If at no time during the Term of this Agreement does the Company occupy the Sublet Space and the Company sublets the Sublet Space to a Non-Qualified User at any time during the Term of this Agreement, the Company shall immediately pay to the Agency the Sales Tax Penalty Amount attributable to any Facility Improvements and/or Facility Equipment located or installed at the Sublet Space.

(c) Upon the request of the Agency, the Company shall, at its sole cost and expense, take such action to effectuate the removal of such Sublet Space from the Project Premises (Facility Improvements), including, without limitation, the entering into of such amendments to this Agreement and the Company Lease as the Agency may require to effect such removal.

Section 6.6. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, attached, made or issued against any of the Project Premises (Facility Improvements) or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project Premises (Facility Improvements) or any part thereof or the interest therein of the Agency, the Company or against any of the rentals or other amounts payable under this Agreement or the Project Agreement or the interest of the Company under this Agreement or under any other Project Document other than Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.6(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Property (Facility Improvements) or the rentals or other amounts payable under this Agreement or any other Project Document.

(b) The Company may at its sole cost and 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 Project Property (Facility Improvements) or any

portion thereof or interest therein or against the Agency or the Company or against any of the rentals or other amounts payable under this Agreement or any other Project Document, (2) neither the Project Property (Facility Improvements) nor any portion thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company nor the Agency would be in any danger of any criminal liability for failure to comply therewith, and (4) neither the Company nor the Agency would be in any danger of any civil liability for failure to comply therewith other than normal accrual of interest.

(c) At the written request of the Agency, the Company shall provide to the Agency all reasonable information as may be requested with respect to any Lien (as described in Section 6.6(a) hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Company in connection therewith.

Section 6.7. 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 Prime Lease and other Permitted Encumbrances, so long as an Event of Default shall not exist hereunder, the Company shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Project Property (Facility Improvements) without molestation or disturbance by or from the Agency or any Person claiming through the Agency, subject to Permitted Encumbrances. The Company covenants and agrees that the Agency shall have, hold and enjoy, during the term hereof, peaceful, quiet and an undisputed leasehold interest in the Project Premises (Facility Improvements), and the Company (at the sole cost and expense of the Company) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.8. 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 PROJECT PROPERTY (FACILITY IMPROVEMENTS) ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT PROPERTY (FACILITY IMPROVEMENTS), OR THE SUITABILITY OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ANY OTHER PERSON. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY SHALL ASSERT NO CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) IS NOT SUITABLE OR FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) OR THE USE OR MAINTENANCE OF ANY THEREOF OR THE FAILURE OF OPERATION OF ANY THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT OF ANY THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.9. Further Assurances. The Company and the Agency mutually covenant and agree that they will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Company (to the extent same shall constitute Extraordinary Costs of Administration), as the Agency or the Company reasonably deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Company hereunder, or under any other Project Document.

Section 6.10. Project Property Registry (Facility Improvements). The Agency shall maintain the Project Property Registry (Facility Improvements), which shall be available for inspection during Agency regular business hours upon reasonable request therefor by the Company. On August 1 of each year during the term of this Agreement commencing August 1, 2002, the Company shall deliver to the Agency, together with the certificates required under Section 3.8 of the Project Agreement, a certificate of an Authorized Representative of the Company certifying the deletions and other updates that should be made to the Project Property Registry (Facility Improvements) so that such registry shall constitute (taking into consideration such additions and deletions and all previously certified additions and deletions) an accurate and complete description of the property comprising the Project Premises (Facility Improvements) and Facility Improvements made thereto.

All such Project Property (Facility Improvements) acquired, equipped, installed, leased, subleased, maintained replaced or repaired shall be enumerated in sufficient detail for accurate identification (as to date of acquisition, vendor, location, physical description, serial number (if applicable and to the extent available), price and the amount of sales and use tax exemptions afforded to the Company in connection with such acquisition) in the Project Property Registry (Facility Improvements).

Section 6.11. Right to Cure Agency Defaults. The Agency hereby grants the Company full authority for the account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default, in the name and stead of the Agency, with full power of substitution.

Section 6.12. Enforcement of Rights Under Prime Lease Against Overlandlord. The Company covenants and agrees that to the extent that the Overlandlord is obligated to the Company under the Prime Lease to comply (or to cause tenants in the Project Building to comply) with all Legal Requirements (the foregoing covenants of the Overlandlord being the "Overlandlord Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Overlandlord Covenants, and upon the direction of the Agency, the Company shall promptly exercise reasonable good faith diligent efforts to enforce the Overlandlord Covenants against the Overlandlord.

Section 6.13. Covenants with Respect to the Prime Lease. (a) The Company covenants and agrees that it shall not enter into an amendment, supplement or modification to the Prime Lease which would materially adversely affect the interests of the Agency (or otherwise amend, supplement, modify or waive any of the Overlandlord Covenants, as defined in Section 6.12 hereof which would materially adversely affect the interests of the Agency). Promptly following the execution thereof, the Company shall furnish copies of any amendment, supplement or modification to the Prime Lease to the Agency.

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

Section 6.14. Release of Portions of the Project Premises (Facility Improvements). (a) Upon receipt by the Agency of written notice from an Authorized Representative of the Company, describing any floor or partial floor of the Project Premises (Facility Improvements) to be released from the leasehold estate granted therein by the Company to the Agency pursuant to the Company Lease and the date, which shall be a Business Day not sooner than, thirty (30) days from the receipt by the Agency of such notice, upon which such portion of the Project Premises (Facility Improvements) is to cease to be leased to the Agency and thereby no longer subject to this Agreement nor part of the Project Premises (Facility Improvements), the Agency shall on the date indicated in such notice and at the sole cost and expense of the Company, effect the release to the Company of all of the Agency's right, title and interest in such portion of the Project Premises (Facility Improvements), provided that the Company has paid any amounts due by the Company pursuant to Section 6.5 hereof. To the extent required by the terms of the Prime Lease, or the Company Lease, or this Agreement, but not as a condition to such conveyance and release by the Agency, the Agency shall enter into an amendment to the Company Lease and this Agreement, at the sole cost and expense of the Company, and shall take such further action to effectuate such additional or other amendments as the Company may reasonably request, to effect or facilitate such conveyance and release to the Company of all of the Agency's right, title and interest in such portion of the Facility Realty and to remove such portion of such premises from the Facility Realty.

(b) Notwithstanding the foregoing, in the event the use or possession of any portion of the Project Premises (Facility Improvements) shall at any time be for a purpose or by a Person which is not a qualified "project" as defined in the Act, the Company shall, upon receipt of written notice from the Agency to such effect, proceed with diligent good faith efforts to cause such use or possession to be for a purpose and by a Person within the definition of qualified "project" as defined in the Act, or failing that, to cause that portion of the Project Premises (Facility Improvements) to no longer be leased to the Agency pursuant to the Company Lease. Subject to the provisions of Section 6.18(a) hereof, the Agency shall cooperate with the Company and execute such documents or other such instruments, as the Company shall reasonably request, at the sole cost and expense of the Company, to effect such release of leasehold from the Agency.

(c) In the event that the Company shall assign the Prime Lease to a Person other than an Eligible Affiliate or shall otherwise abandon all or substantially all of the Facility Realty in accordance with Section 6.5 or this Section 6.14, the Agency shall release to the Company all of the Agency's right, title and interest in the Facility Realty, all in the manner provided in this Section 6.14.

Section 6.15. Additional Project Premises (Facility Improvements). (a) The Company shall further have the right, from time to time, to lease to the Agency pursuant to the Company Lease additional premises demised under the Prime Lease (the "Additional Project Premises (Facility Improvements)") to be made subject to the Company Lease and this Agreement, on the condition, however, that:

(i) at least ten (10) days prior to the proposed letting, the Company shall have delivered to the Agency a certificate of an Authorized Representative of the Company stating the intention of the Company to effect such letting, and certifying (A) as to the Additional Project Premises (Facility Improvements) to be leased to the Agency and the proposed date of such letting, which date shall be a Business Day (the "Additional Project Premises (Facility Improvements) Closing Date"); (B) as to the aggregate rentable square feet which such Additional Project Premises (Facility Improvements) comprises; (C) as to the aggregate rentable square feet of Project Premises (Facility Improvements) which the Agency would sublease (as the case may be) after such letting; (D) as to a description of any Person (other than the Company or any Eligible Affiliate) as shall be occupying or using any portion of such Additional Project Premises (Facility Improvements) (accompanied by a true and complete copy of the lease or other use or occupancy agreement with such Person), the use by such Person of such space, that the Agency is not a landlord to such Person whether as a matter of agreement with such Person or by law, and the Agency has and shall have no landlord obligations or liabilities owing to such Person, that no more than twenty percent (20%) of the aggregate square footage of the Project Premises (Facility Improvements) is for a retail purpose, the rentable square feet occupied by each such Person, the aggregate amount of rentable square feet of the Project Premises (Facility Improvements) after the letting of the Additional Project Premises (Facility Improvements) to the Agency as would be occupied by each Person, and the percentage of aggregate rentable square feet as would comprise the Project Premises (Facility Improvements) after such letting which would be used or occupied by all Persons other than the Company or Eligible Affiliates; (E) that other than that portion of the Additional Project Premises (Facility Improvements) stated to be used or occupied by Persons other than the Company or Eligible Affiliates, the space comprising the Additional Project Premises (Facility Improvements) will either remain vacant or be occupied and used by the Company and/or other Eligible Affiliates in the Company Business; and (F) that no "event of default" exists under the Prime Lease and no Event of Default exists under this Agreement, nor to the Company's knowledge does an event exist which upon notice or lapse of time or both would constitute such an Event of Default; and

(ii) on the Additional Project Premises (Facility Improvements) Closing Date, Agency shall receive:

(A) In the event the Additional Project Premises (Facility Improvements) shall not have heretofore constituted a portion of the Project Premises Facility Improvements, a transaction screen analysis with respect to the Additional Project Premises (Facility Improvements), reasonably satisfactory in form and substance to the Agency;

(B) Reserved;

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

(D) a certificate of an Authorized Representative of the Company certifying, as of the Additional Project Premises (Facility Improvements) Closing

Date, as true and correct the matters set forth in the certificate described in Section 6.19(a)(i) above;

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

Section 6.16. Company to Remain Tenant Under Prime Lease. In the event the Company shall at any time or for any reason assign its interest in the Prime Lease to an Eligible Affiliate, the Company shall also assign its interest in this Agreement and in the Company Lease to such assignee and cause such assignee to assume in writing all of the obligations of the Company contained in this Agreement and the Company Lease jointly and severally with the Company and deliver to the Agency an opinion of counsel to the Company to the effect that such assignee shall be bound jointly and severally with the Company by all of the terms applicable to the Company under this Agreement and the Company Lease.

ARTICLE VII
Events of Default; Remedies

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

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

(b) Failure of the Company to pay any amount (except the obligation of the Company to pay rent under Section 3.3 of this Agreement) that has become due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.2, 4.3, 4.6, 6.1, 6.2, 6.3, 6.13, or 9.2 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency (provided however that no Event of Default shall exist hereunder with respect to a failure of the Company to comply with Section 6.13 hereof for so long as the Company shall promptly exercise good faith diligent efforts to enforce the Overlandlord Covenants against the Overlandlord regardless of the Overlandlord's compliance therewith);

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or the Company shall acquiesce in writing to any of the foregoing; or any order for relief against the Company shall be entered in an involuntary

case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made (i) by the Company in the application and related materials submitted to the Agency for approval of the Project or its financing, or (ii) by the Company herein, or (iii) in any report, certificate, financial statement, summary of financial statements or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made, and which, in the case of clauses (i), (ii) or (iii) hereof, (y) if the damage resulting therefrom shall be capable of being cured, and such damage shall not in fact be cured within thirty (30) days after receipt by the Company of notice of the false, misleading or incorrect representation or warranty, or, if by reason of such damage the same can reasonably be remedied over a reasonable period of time, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same; or (z) shall not have been made in good faith;

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

(h) The Prime Lease or the Company Lease shall be terminated or expire for any reason whatsoever;

(i) The Company or any Eligible Affiliate shall become a Prohibited Person; or

(j) The abandonment by the Company of all or substantially all of the Project Premises (Facility Improvements) or the subletting by the Company of all or substantially all of the Project Premises (Facility Improvements) to any Person as shall not constitute an Eligible Affiliate.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

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

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

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

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

Notwithstanding any other provision of this Agreement, no remedy of specific performance or injunction, stay or restraining order or other equitable remedy may be sought or obtained by the Agency to (y) prevent or delay or impede in any manner (1) any assignment by the Company of its interest in the Facility Equipment, (2) any action taken or intended to be taken by the Company under or consistent with Section 6.1 hereof or (3) any proposed subletting of the Project Premises (Facility Improvements) consistent with Section 9.2. hereof, or (z) compel the use by the Company of the Project Premises (Facility Improvements) or any portion thereof as a qualified "project" under the Act, and the Agency hereby absolutely and irrevocably waives any right to such remedy and any right to seek or obtain any such remedy.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from the Company's obligations hereunder, including without limitation, the obligations of the Company under Section 6.2, which shall survive any such action.

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

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

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

Section 7.6. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default hereunder shall occur and the Agency should employ attorneys or incur other expenses for the

collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

ARTICLE VIII
Options

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

(b) The Company, in purchasing the Agency's interest in the Project Property (Facility Improvements) and terminating this Agreement pursuant to Section 8.1(a) hereof, shall pay to the Agency, as the purchase price, in legal tender, an amount equal to all rental payments due hereunder, plus one dollar (\$1.00).

(c) The Company shall not, at any time, assign or transfer its option to purchase the Agency's interest in the Project Property (Facility Improvements) as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.2 hereof without the prior written consent of the Agency (not to be unreasonably withheld or delayed).

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

Upon conveyance of the Agency's interest in the Project Property (Facility Improvements) pursuant to this Section 8.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Section 6.2, which shall survive such termination.

ARTICLE IX
Miscellaneous

Section 9.1. Force Majeure. In case by reason of the occurrence of a Force Majeure event 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 event 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 (x) the Company to pay the rental payments under Sections 3.3 and 7.2 hereof, (y) the Company to make other payments required under the terms hereof, or (z) the Company to comply with Sections 4.2, 4.3, 4.4, 4.6, 6.1, 6.2, 6.3, or 9.2 hereof), so far as they are affected by such Force Majeure event, shall be suspended during the continuance of such Force Majeure event, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. The settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and the above requirements that the occurrence of such Force Majeure event shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

The Company shall promptly notify the Agency upon the occurrence of each Force Majeure event, describing such Force Majeure event and its effects in reasonable detail. The Company shall also promptly notify the Agency upon the termination of each such Force Majeure occurrence.

The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any Force Majeure event and any of the contentions contained in any such notice received from the Company.

Section 9.2. Assignment or Sublease. (a) The Company shall not at any time (i) assign or transfer this Agreement or (ii) sublease, any portion of the Project Premises (Facility Improvements), without the prior written consent of the Agency (which consent shall be in the sole discretion of the Agency); provided, that with respect to any such assignment, transfer or sublease, (1) the Company shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (2) any assignee or transferee of the Company shall have executed and delivered to the Agency an instrument, in form for recording, in and by which the assignee or transferee shall have assumed in writing and agreed to keep and perform all of the terms of this Agreement (and of each other Project Document to which the Company shall be a party) on the part of the Company to be kept and performed, shall be jointly and severally liable with the Company for the performance thereof, shall be subject to service of process in the State, and, if a

corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment or transfer shall not cause the obligations of the Company and all of the terms, covenants and conditions of this Agreement, or of any other Project Document to which the Company shall be a party, to cease to be legal, valid and enforceable against the Company, (4) any assignee or transferee shall utilize the Project Property (Facility Improvements) as a qualified "project" as defined in the Act, (5) such assignment or transfer shall not violate any provision of this Agreement, or any other Project Document, (6) such assignment or transfer shall in no way diminish or impair the Company's obligation to carry the insurance required under Section 4.4 of this Agreement and the Company shall furnish written evidence reasonably satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, and (7) each such assignment or transfer contains such other provisions as the Agency may reasonably require (which the Agency shall provide within 15 days after request by the Company). The Company shall furnish or cause to be furnished to the Agency a copy of any such assignment or transfer in substantially final form at least ten (10) days prior to the date of execution thereof.

(b) Notwithstanding the foregoing, the Company shall have the right, without any change or reduction in the benefits afforded herein, to sublet (subject to the provisions of Section 6.18 hereof) portions of the Project Premises (Facility Improvements) to one or more Non-Qualified Users, provided in each case that (1) no such sublessee is a Prohibited Person, (2) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (3) any sublessee shall utilize the Facility Realty as a qualified "project" as defined in the Act, and (4) prior to the entering into of such sublease, the Company shall have delivered to the Agency:

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

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

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

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

In the event the Agency shall reasonably request additional information with respect to the proposed sublease or subtenant, the Company shall deliver such information to the Agency promptly after such request. In the event that any conditions set forth above shall not be satisfied, the Company may, in accordance with Section 6.18 hereof, cause such proposed sublet space to be excluded from the Facility Realty (1) leased by the Company to the Agency pursuant to the Company Lease, and (2) by the Agency to the Company pursuant to this Agreement.

(c) Any consent by the Agency to any act of assignment, transfer or sublease with respect to this Agreement shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease with respect to this Agreement or as modifying or limiting the rights of the Agency or the obligations of the Company under this Section 9.2.

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

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

Section 9.4. Notices. All notices, certificates, requests, approvals, consents or other communications hereunder shall be in writing and shall be sent by registered or certified United States mail, postage prepaid, or by hand delivery (acceptance acknowledged), facsimile (receipt acknowledged), Federal Express or other nationally recognized overnight courier service, addressed:

(a) if to the Agency, to the Chairman, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, with a copy to the Executive Director of the Agency at the same address;

(b) If to the Company, Brown Brothers Harriman & Co., 59 Wall Street, New York, New York 10005, Attention: Radford W. Klotz, until such time as the Company shall occupy the Project Premises (Facility Improvements), and thereafter to the Company at 140 Broadway, New York, New York 10271, Attention: Radford W. Klotz. A copy of each default notice to the Company shall also be sent to the Company's counsel, Skadden, Arps, Slate, Meagher & Flom, Four Times Square, New York, New York 10036, Attention: Neil L. Rock, Esq.

The Agency and the Company may, by like notice, designate any further or different persons or addresses to which subsequent notices, certificates, requests, approvals, consents or other communications shall be sent. Any notice, certificate, requests, approvals, consents or other

communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date received or delivery rejected as indicated on the return receipt.

Section 9.5. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Project Property (Facility Improvements) with respect to the subject matter hereof, other than any Project Document or other document being executed contemporaneously herewith.

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

Section 9.9. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be executed in 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 be binding upon the Agency and the Company and their respective successors and assigns, and inure to the benefit of the Agency, and to no other Person.

Section 9.11. Law Governing. (a) This Agreement shall be governed by, and construed in accordance with, the internal laws of the State, without regard to conflict of law principles.

(b) The parties agree that Article 2A of the New York Uniform Commercial Code (McKinney's Uniform Commercial §§2A-101 to 2A-532) shall not apply to this Agreement.

Section 9.12. Investment Tax Credit. It is the intention of the parties that as between the Agency and the Company, (a) the Company shall be entitled to all depreciation deductions with respect to the Project Premises (Facility Improvements) under Section 167 or 168 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Project Premises (Facility Improvements) and any comparable state and local income tax benefits

(whether now existing or hereafter enacted or adopted); and (b) without limiting the generality of the foregoing, any investment tax credit or comparable credit which may ever be available shall accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Company to have such benefit. The Agency makes no representation or warranty whatsoever, however, that any such tax benefits would be available to either the Agency or the Company.

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 Project Property (Facility Improvements) 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 shall survive the termination or expiration of this Agreement.

Section 9.14. Non-Discrimination. At all times during the term of this Agreement, the Company shall comply and cause all Eligible Affiliates to comply with all applicable federal, state and local laws relating to non-discrimination.

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 create a debt of the State or 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 amounts payable to the Agency by the Company 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 executed and delivered on the Lease Commencement Date.

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By 

Carolyn A. Edwards
Deputy Executive Director

BROWN BROTHERS HARRIMAN & CO.


By: _____
Name:
Title:

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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By _____
Carolyn A. Edwards
Deputy Executive Director

BROWN BROTHERS HARRIMAN & CO.

By: 
Name: Bradford W. Klotz
Title: Partner

APPENDICES

20-- subtenant survey

Brown Brothers Harriman & Co.
 59 Wall Street
 New York, New York 10005

In order to verify compliance with your IDA transaction documents, please complete the information requested below for each and every subtenant occupying space in your facility of **January 1, 2002**.

Total Square Footage of Building(s): _____ s.f.

<u>Subtenant</u>	<u>Floor</u>	<u>Square Footage Leased</u>	<u>Lease Begins</u>	<u>Lease Ends</u>
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I, the undersigned, hereby certify to the best of my knowledge and belief that the information reported above is true, correct and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number _____

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

HelpLine: 212-312-3968

Annual Average Employment Number shall mean, for any Annual Period, the average number (on a monthly basis) of Eligible Employees in the City determined by adding the number of Eligible Employees employed as of the last payroll date for each month during such Annual Period, and dividing such sum by the number of months in such Annual Period, as calculated in accordance with Section 5.4 of the Project Agreement.

Approved Company Location(s) shall mean the following locations (to the extent that such locations shall be occupied by the Company or Eligible Affiliates engaged in the Company Business): (i) approximately 352,000 aggregate square feet of office space on floors 2 through 12, 16 and 17 and portions of floors 1, 14, 15 and Concourse A in the building located at 140 Broadway, New York, New York and (ii) such other locations within the City as the Agency shall, upon written request by an Authorized Representative of the Company, approve in accordance with the requirements of the Act, such approval by the Agency to be evidenced by a writing to such effect delivered by the Agency to the Company.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director or Deputy Executive Director of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Company, the Chief Executive Officer, the Chief Financial Officer, any managing partner, any partner or authorized signatory; 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, 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 Employment Number shall mean, for any Annual Period, 770 Eligible Employees; provided, however, that for the purpose of calculating the Base Employment Reduction and Base Employment Reduction Percentage in connection with a (i) Relocation Reduction, the Base Employment Number for such Annual Period shall be reduced by any Base Employment Reduction then existing that resulted from a Non-Relocation Reduction, and (ii) a Non-Relocation Reduction, the Base Employment Number for such Annual Period shall be reduced by any Base Employment Reduction then existing that resulted from a Relocation Reduction.

Base Employment Reduction shall mean, for any Annual Period, the difference, if any (but not less than 0), derived from subtracting the Annual Average Employment Number for such Annual Period from the Base Employment Number then in effect.

Base Employment Reduction Percentage shall mean the percentage derived by dividing the Base Employment Reduction by the Base Employment Number.

Benefits shall mean, collectively (but subject to the respective maximum amounts, if any, permitted therefor under this Agreement), (i) all Sales Tax Savings including such savings availed of or to be availed of through the application of Growth Credits, and (ii) all Energy Cost Savings (each of such savings in clauses (i) and (ii) being individually, a "Benefit"), availed of and to be availed of by the Company pursuant to this Agreement, the Lease Agreement, or the Sales Tax Letter and not repaid pursuant to Section 5.2 of the Project Agreement.

BIR Energy shall mean energy made available (whether metered, submetered or on a rent-inclusion basis or otherwise) to the BIR Premises by Con Ed at a reduced rate pursuant to Con Ed's Business Incentive Rate Program.

BIR Energy Load shall mean a fixed amount of 1.41 megawatts of BIR Energy, which shall be the maximum BIR Energy demand commitment made by Con Ed to the Company.

BIR Premises shall mean the Project Premises (Facility Improvements), to the extent occupied and used by the Company.

BIR Program shall mean Con Ed's Business Incentive Rate Program to provide electric power to certain eligible customers at the rates set forth in Service Classification Rider J to Service Classification Nos. 4 and 9, effective April 9, 1995, and any amendments thereof.

Business Day shall mean any day which 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.

Certification Date shall mean the Lease Commencement Date and with respect to each Annual Period, no later than the next August 1 following the date on which such Annual Period ends (or the 30th day following the last day of the Term, if applicable).

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

Company shall mean Brown Brothers Harriman & Co., a limited liability partnership organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Section 4.1 hereof (including any surviving, resulting or transferee limited liability partnership or other legal entity as provided in Section 4.1 of the Project Agreement) and each Eligible Affiliate designated from time to time by the Company to be appointed as an Agent of the Agency for purposes of acquiring Facility Improvement Materials and acquiring and leasing Facility Equipment.

Company Business shall mean the banking, investment, management, global custody, investor services, securities brokerage, foreign exchange, corporate finance, private equity and financial advisory services conducted from time to time by the Company and its Affiliates.

Company Lease shall mean the Company Lease (140 Broadway) of even date herewith between the Company and the Agency relative to the Project Premises (Facility Improvements) and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Company Property shall have the same meaning as set forth in Section 4.1(c) of the Lease Agreement.

Con Ed shall mean the Consolidated Edison Company of New York, Inc., a New York corporation, and its successors.

Contract Employee means an individual who is, or is employed by an independent contractor who directly contracts with the Company to provide services to the Company at the Project Premises, which services would otherwise be performed by Full-Time Employees or Full-Time Equivalent

Employees, and who, but for their status as independent contractors, or as employees of an independent contractor, would otherwise fall within the definition of a Full-Time Employee or Full-Time Equivalent Employee (i.e., for part-time Contract Employees).

Current Project Property (Facility Improvements) shall have the same meaning as defined in Section 4.2 hereof.

Eligible Affiliate shall mean any Person controlled by the Company. "Control" (including the related terms "controlled by" and "under common control with") of a Person shall exist only when all three (3) of the following criteria are met: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; (ii) the ownership, either directly or indirectly, of at least 51% or more of the voting stock or other equity or ownership interest of such Person; and (iii) the possession, directly or indirectly, of the power to make decisions regarding the hiring, firing, compensating and promoting of the employees of such Person.

Eligible Employee shall mean an Employee of the Company or an Eligible Affiliate (i) located and employed primarily in New York City, (ii) whose principal base of operations is New York City, (iii) whose income is paid primarily from the Company's or the Eligible Affiliate's New York City-based payroll, and (iv) with respect to whom the Company or the Eligible Affiliate is responsible for payment of unemployment insurance premiums and for reporting to the New York State Department of Employment on Form IA-5 or its equivalent, but excluding any Ineligible Employee.

Eligible Personalty means qualified machinery, equipment, furniture, fixtures and other tangible personal property, having a useful life of one year or more, to be used by the Company and Eligible Affiliates at an Approved Company Location, but excluding rolling stock, ordinary office supplies such as pencils, paper clips and paper and decorative items such as fine arts, plants and objets d'art.

Employee shall mean a Full Time Employee, a Contract Employee, or a Full-Time Equivalent Employee. For purposes of this definition, the term Employee shall include individuals who are partners of the Company.

Energy Cost Savings shall mean the positive difference, if any, between (i) the costs that would have been incurred by the Company on account of energy usage at the BIR Premises, but for the provision to it of BIR Energy, and (ii) the costs actually incurred by the Company on account of BIR Energy usage at the BIR Premises.

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

Equipment Project shall mean the acquisition of the Facility Equipment, Leased Personalty and Maintenance Contracts by the Agency for the benefit of the Company in accordance with the provisions of the Equipment Lease Agreement and the provisions hereof.

Estimated Energy Cost Savings shall mean the amount of Energy Cost Savings (as defined in Section 5.21 of the Project Agreement), estimated as of the Lease Commencement Date to be \$796,000 NPV, anticipated to be realized by the Company during the term of this Agreement, such amount to be subject to reduction as provided in Sections 5.7, 5.8 and 5.12 of the Project Agreement.

Estimated Remaining Energy Cost Savings shall mean that estimated amount of Energy Cost Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting Energy Cost Savings actually received from Estimated Energy Cost Savings.

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

Extraordinary Costs of Administration shall mean any out of pocket fees, costs or expenses that shall be paid or are payable by the Agency in its administration of the provisions of the Project Documents and which are not reasonably foreseeable on the Lease Commencement Date; it also being agreed that (i) any fees, costs or expenses as arise by reason of any additions to or releases from the Project Premises (Facility Improvements), pursuant to Sections 6.14 and 6.15 hereof of the Lease Agreement and (ii) the fees and disbursements of the Agency's Project Counsel in performing services for the Agency (which services are not in the ordinary course) in connection with any of the Project Documents, shall in each case be deemed "Extraordinary Costs of Administration".

Facility Equipment shall mean machinery, equipment, furniture, trade fixtures and other tangible personal property, having a useful life of one year or more, to be used by the Company at the Project Premises (Facility Equipment), but excluding rolling stock, ordinary office supplies such as pencils, paper clips and paper and decorative items such as fine art, plants and other objets d'art.

Facility Improvement Materials shall mean construction materials and tangible personal property to be used by the Company to make capital improvements or leasehold improvements at, and to renovate and upgrade the Project Premises (Facility Improvements).

Facility Improvement Project shall mean the subleasing of Project Premises (Facility Improvements) by the Agency and the acquisition and installation of Facility Improvement Materials at the Project Premises (Facility Improvements) for purposes of renovating and upgrading of the Project Premises (Facility Improvements).

Facility Improvements shall mean, collectively, leasehold improvements constructed at the Project Premises (Facility Improvements) and the Facility Improvement Materials installed at the Project Premises (Facility Improvements) pursuant to Section 2.1 hereof and described in the Project Property Registry (Facility Improvements).

Fiscal Year shall mean an annual period beginning on July 1 and continuing through and including the following June 30.

Force Majeure shall have the meaning specified in Section 9.1 hereof.

Foreign Entity shall mean any Person not included within the Company.

Full-time Employee shall mean, with respect to an Annual Period, a natural person on the payroll of, receiving standard benefits from, and directly employed during such Annual Period by,

the Company (and excluding any persons employed by or through temporary employment or similar agencies) and working primarily within the City for the Company during such Annual Period on a "full-time basis" (i.e., working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

Full-time Equivalent Employee shall mean, with respect to an Annual Period,

(i) two (2) natural persons each of whom (x) is on the payroll of and is directly employed in the City during such Annual Period by the Company, (y) receives benefits customarily conferred by the Company for persons working similar hourly work weeks, and (z) works on a "part-time basis" (i.e., working less than a 35-hour week), and

(ii) two (2) natural persons each of whom (x) is on the payroll of and is directly employed in the City during such Annual Period by the Company, (y) may or may not receive standard benefits, and (z) receives compensation based on the actual number of hours worked,

it being understood and agreed that, for purposes of arriving at a "headcount" of Eligible Employees for purposes of this Agreement, two (2) such persons described in paragraph (i) or (ii) above working (subject to customary vacation, holiday and sick leave) an aggregate of at least forty (40) hours per week (and each of whom shall work at least a 20-hour work week, but less than a 35-hour work week) shall be counted as one (1) Eligible Employee.

Government Penalty Amounts shall mean any applicable interest, fines, fees, penalties or other charges as may be imposed by the Tax Collecting Entity with respect to the improper or unauthorized taking of Sales Tax Savings, but expressly excluding from such charges amounts payable as a direct return of claimed Sales Tax Savings.

Growth Credit means an annual credit provided to the Company in an amount equal to \$1,850 per Annual Period per Growth Employee; provided, however, that no Growth Credit thereafter shall be provided to the Company if the provision of such would violate Agency Requirements and in no Event shall the Company receive a Growth Credit for an Ineligible Employee.

Growth Employee means each Eligible Employee of the number of Eligible Employees included in the positive difference between the Annual Average Employment Number and the Base Employment Number.

Headquarters shall mean (i) the executive offices that are most closely associated with the principal decision-making with respect to the business operations of the Company; and (ii) those Employees who make the principal decisions concerning the business operations of the Company.

Inducement Date shall mean June 12, 2001, the date on which the Agency's Board of Directors adopted a resolution inducing the Company's participation in the Project.

Ineligible Employee shall mean

(i) an Employee employed by the Company as a result of an Acquisition or Merger occurring at any time during the term of this Agreement if such Employee was employed in New York City by the Foreign Entity (or group of Foreign Entities affiliated with each other) involved in such Acquisition or Merger at any time during the one (1) month period prior to and including the date on which such Acquisition or Merger occurred; provided however, that to the extent the Company, within a six (6) month period following such Merger or Acquisition, replaces its own Eligible Employee with an Ineligible Employee who performs similar functions, such Ineligible Employee shall be deemed to be an Eligible Employee; or

(ii) with respect to any Eligible Affiliate in which the Company owns 50% or more of the voting stock or other equity interest of such Eligible Affiliate, 50% of the Employees of such Eligible Affiliate shall be deemed to be Ineligible Employees and shall not be included in the total Annual Average Employment Number for any Annual Period.

Independent Accountant shall mean any of the "big five" accounting firms or any other independent certified public accountant or firm of independent certified public accountants selected by the Company and approved in writing by the Agency (such approval not to be unreasonably withheld or delayed).

Lease Agreement shall mean this Lease Agreement (140 Broadway) dated as of May 1, 2002 between the Company and the Agency relating to the Project Premises (Facility Improvements).

Lease Agreements shall mean, collectively, the Company Lease, the Lease Agreement and the Equipment Lease Agreement.

Lease Commencement Date shall mean the date upon which the Agency shall issue its Sales Tax Letter.

Leased Personalty shall mean one or more items of tangible personal property, including, without limitation, furniture, trade fixtures, mainframes (and peripherals) computers, personal computers, telecommunications equipment, business machines, equipment relating to the operation of the five foregoing categories, and software, in which the Agency shall acquire a leasehold or license interest under a Qualified Personalty Lease in accordance with Section 2.1 of the Project Agreement, for Principal Use by the Company or an Eligible Affiliate in furtherance of the Company Business at any Approved Company Location as part of the Facility Equipment Project. Leased Personalty shall not include rolling stock.

Limited Lessee/Agent shall mean an Eligible Affiliate appointed by the Agency as its agent for the purposes and on the conditions as set forth in Section 3.5 hereof, and acting as a lessee of the Project Property under each of the Lease Agreements and as an assuming party under each of this Agreement, each of the Lease Agreements and the Sales Tax Letter, all as set forth in Section 3.15 of the Project Agreement.

Liens shall have the meaning specified in Section 6.6(a) hereof.

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

Maintenance Contract shall mean contracts entered into by the Company or any Limited Lessee/Agent as Agent for the Agency for the maintenance, service, or repair of Facility Equipment or Leased Personalty for use by the Company or any Eligible Affiliate at an Approved Location, to the extent such contracts only encompass Qualified Maintenance or provide for maintenance of a type greater than Qualified Maintenance and have a specific allocation of cost for Qualified Maintenance.

Maximum Energy Cost Savings Amount means Energy Cost Savings available to the Company during the Term in an amount not to exceed \$796,000 NPV.

Maximum Growth Credit Amount means \$2,140,000 NPV.

Maximum Sales Tax Savings Amount shall mean, with respect to Sales Tax Savings attributable to Project Costs, an amount not to exceed, in the aggregate, the sum of (i) \$1,347,500, and (ii) the aggregate nominal dollar amount of Growth Credits earned by the Company in accordance herewith, subject to the Maximum Growth Credit Amount, up to the earlier of (x) the Project Termination Date, and (y) the date on which the Company shall have received the Maximum Growth Credit Amount, subject, however, to reduction as provided in Sections 5.7, 5.8 and 5.12 of the Project Agreement.

Merger shall mean a merger between the Company and a Foreign Entity.

Multiplier Factor shall mean the following multiplying factors for the purpose of determining a Recapture Payment for the respective Annual Periods indicated below:

<u>Annual Period</u> <u>(both dates inclusive)</u>	<u>Multiplier Factor</u>
Inducement Date - 6/30/2011	2.00
7/1/11 - 6/30/13	1.85
7/1/13 - 6/30/15	1.70
7/1/15 - 6/30/16	1.60
7/1/16 - 6/30/17	1.50
7/1/17 - 6/30/18	1.40
7/1/18 - 6/30/19	1.30
7/1/19 - End of Term	1.20

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount from any such proceeds, award, compensation or damages less all expenses (including attorneys' fees, adjusters' fees and other expenses of the Agency but excluding fees or expenses of the Agency's Project Counsel or General Counsel) incurred in the collection thereof.

Non-Qualified User shall mean any Person other than the Company and the Eligible Affiliates.

Non-Relocation Reduction shall mean any Base Employment Reduction for any reason other than a Relocation Reduction.

Non-Relocation Reduction Annual Period shall mean the Reported Annual Period with respect to and during which a Non-Relocation Reduction shall have occurred.

Nominal Dollars shall mean the face amount of a payment charge or credit.

NPV shall mean net present value determined as follows: when following a specified or ascertainable dollar amount, the value as of the Lease Commencement Date of a future dollar amount discounted from December 31 of the Fiscal Year in which such amount is paid, at the annual compounded rate of seven and three-quarters percent (7.75%) per annum. For the purposes hereof, NPV shall not apply to Sales Tax Savings realized prior to the Lease Commencement Date.

Opinion of Counsel shall mean a written opinion of counsel who may except as otherwise expressly provided in this Agreement be counsel for the Company or the Agency, as the case may be, and who shall be reasonably acceptable to the Agency and the Company.

Ordinary Costs of Administration shall mean those out of pocket fees, costs or expenses that the Agency shall reasonably be expected to pay or incur in its day-to-day administration of the provisions of the Project Documents and which are reasonably foreseeable on the Lease Commencement Date as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder, or taking ordinary course actions relative to (and to confirm) the addition of Project Personalty or the removal and any substitution or replacement of Project Personalty hereunder.

Overlandlord shall mean MSDW 140 Broadway Property, L.L.C., a limited liability company organized and existing under the laws of the State of New York, and its successors and assigns under the Prime Lease.

Permitted Encumbrances shall mean, as of any particular time,

(i) the Prime Lease and all encumbrances to which the Prime Lease is or may become subject, the Company Lease and this Agreement;

(ii) liens for real estate taxes, assessments, levies and other governmental charges and impositions, and any liens for water and sewer rents and taxes, each to the extent not yet due and payable or to the extent being contested in accordance with Section 6.6(b) hereof;

(iii) utility access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially interfere with or impair the use of the Project Premises (Facility Improvements) as contemplated by the parties hereto;

(iv) such defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project Premises (Facility Improvements) and as do not, either singly or in the aggregate, materially impair the use of the

property affected thereby for the purpose for which it was acquired and held by the Company under this Agreement;

(v) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable or if payment is being contested by the Company, all if and to the extent permitted by Section 6.6 hereof;

(vi) all title exceptions to which the Project Premises (Facility Improvements) and the Project Building (Facility Improvements) are subject;

(vii) any mechanic's lien imposed on the Project Building (Facility Improvements) and which arises from work performed for the Overlandlord or for any tenant of the Project Building (Facility Improvements) other than the Company, or any judgment lien imposed on the Project Building (Facility Improvements) and which arises from a judgment against the Overlandlord or against any tenant of the Project Building (Facility Improvements) other than the Company, or any lien of any nature whatsoever which is imposed on the Project Building (Facility Improvements) and which is not the responsibility of the Company to remove, bond or dispose of; and

(viii) all liens, encumbrances and matters to which the Prime Lease is now or hereafter shall be subordinate.

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

Prime Lease shall mean the agreement of lease, dated July 14, 2001, between the Overlandlord and the Company, as tenant, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith, which Prime Lease demises approximately 403,369 square feet of office space in floors 2 through 12, 16 through 20 and portions of floors 1, 14, 15 and Concourse A at the Project Building.

Principal Use when used with reference to the use of tangible personalty, shall mean that such tangible personalty is located, installed, maintained and stored only at an Approved Company Location and at no other location which is not an Approved Company Location, for use at such location only by the Company and Eligible Affiliates in furtherance of the Company Business, subject, however, to (x) the ability of Non-Qualifiers Users to use Facility Improvements and Facility Equipment at the Project Premises or Approved Company Location, as the case may be, to the extent that (i) such Facility Improvements or Facility Equipment constitute part of the Project Premises or Approved Company Location, as the case may be, which shall in either case be subleased to such Non-Qualified User(s) pursuant to a subletting permitted by the Lease Agreement and (ii) such Facility Improvements or Facility Equipment shall not have been originally effected for the purpose of subletting to Non-Qualified Users, (y) any rights of incidental use as may be granted by the Company or an Eligible Affiliate in the ordinary course of the Company Business to Persons not constituting the Company or an Eligible Affiliate to (a) effect the repair and/or maintenance of such Facility Equipment or Leased Personalty, or (b) access electronics or telecommunication equipment constituting Facility Equipment or Leased Personalty, provided that such items of electronics or telecommunication equipment shall not have been acquired for the purpose of permitting the

Company to function as an equipment vendor or lessor to Persons not constituting either the Company or an Eligible Affiliate, and (z) the provisions of Section 4.2 of this Agreement.

Prohibited Person shall mean:

(i) any Person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively;

(ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or has substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or has substantial business or other affiliations with an organized crime figure;

(iii) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof; or

(iv) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).

Project shall mean collectively, the Facility Improvement Project and the Equipment Project.

Project Building shall mean that certain building located at 140 Broadway, New York, New York.

Project Costs means (a) to the extent permitted to be made in accordance with Agency Requirements, costs incurred by the Company, as agent for the Agency, for (i) the acquisition or leasing (provided that such lease is a capital lease as determined in accordance with generally accepted accounting principles or contains a purchase option) of Facility Equipment and Leased Personalty to be installed and used by the Company at the Project Premises (Facility Equipment) and the undertaking of Maintenance Contracts with respect to such Facility Equipment and Leased Personalty and (ii) costs incurred by the Company, as agent for the Agency, for the acquisition of

Facility Improvement Materials to be installed and used by the Company at the Project Premises (Facility Improvements) and (b) costs incurred by the Company, as agent of the Agency, for Qualified Maintenance Contracts entered into solely in connection with the Project.

Project Counsel shall mean Winston & Strawn or other nationally recognized counsel acceptable to the Agency experienced in municipal finance law.

Project Documents shall mean, collectively, the Project Documents (Facility Equipment) and the Project Documents (Facility Improvements).

Project Documents (Facility Equipment) shall mean, collectively, this Agreement, the Equipment Lease Agreement, and the Sales Tax Letter.

Project Documents (Facility Improvements) shall mean, collectively, this Agreement, the Company Lease, the Lease Agreement and the Sales Tax Letter.

Project Premises shall mean, collectively, to the extent owned or leased by the Company, (a) the Project Premises (Facility Improvements) and (b) the Project Premises (Facility Equipment).

Project Premises (Facility Equipment) means those premises at which the Company shall be permitted to incur Project Costs for the purpose of acquiring or leasing Facility Equipment for use by the Company at such premises, consisting of, to the extent leased, or owned and occupied by such Company, the following locations: an area containing approximately 352,000 square feet of office space in the building located at 140 Broadway, New York, New York, and subject to the Company's compliance with all Agency Requirements then in effect with respect thereto, the Agency's Board of Directors' approval, and the execution of all necessary agreements in form reasonably satisfactory to the Agency, such additional space in buildings located in New York City, hereafter leased or owned and occupied by the Company.

Project Premises (Facility Improvements) means, to the extent the Agency has fee or leasehold title thereto, those premises at which the Company shall be permitted to incur Project Costs for the purpose of acquiring Facility Improvement Materials for use by the Company at such premises, consisting of, to the extent leased or owned and occupied by such Company, the following location: an area containing approximately 352,000 square feet of office space in the building located at 140 Broadway, New York, New York; and subject to the Company's compliance with all Agency Requirements and the Agency's Board of Directors' approval, and the execution of all necessary agreements in a form reasonably satisfactory to the Agency, such additional or substitute space in building located in New York City, hereafter leased or owned and occupied by the Company.

Project Property (Personalty) means, as the context requires, Facility Improvement Materials and Facility Equipment.

Project Property shall mean, collectively, the realty, including capital improvements, comprising the Project Premises (Facility Improvements) and the Project Property (Personalty).

Project Property (Facility Improvements) shall mean, collectively, the Project Premises (Facility Improvements) and the Facility Improvements.

Project Property Registry shall mean, collectively, the Project Property Registry (Facility Improvements) and the Project Property Registry (Facility Equipment).

Project Property Registry (Facility Equipment) shall mean the registry maintained by the Agency at its office of all the Facility Equipment as such registry shall be modified, amended or supplemented from time to time.

Project Property Registry (Facility Improvements) shall mean the registry maintained by the Agency at its office of all the Facility Improvements made to the Project Premises (Facility Improvements) as such registry shall be modified, amended or supplemented from time to time.

Project Termination Date shall mean April 30, 2022.

Qualified Maintenance shall mean, with respect to any item of Eligible Personalty or Leased Personalty having a useful life of one year or more, the replacement of parts (other than parts that contain materials or substances that are consumed in the operation of such property (e.g., a toner cartridge) 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.

Qualified Personalty Lease shall mean a lease of one or more items of Leased Personalty to the Company on behalf of and as agent for the Agency, (1) which lease would be characterized under the Accounting Standards of the Financial Accounting Standards Board, and is so recorded on the books and records of the Company, as a "capital lease", or (2) pursuant to which an option to purchase the subject property of such lease is granted thereunder by the lessor.

Recapture Amount shall mean the Aggregate Benefits not previously recaptured, excluding from such calculation any amounts paid as penalties by reason of the application of the Multiplier Factor.

Recapture Payment shall mean any amount as shall be due and owing by the Company pursuant to Section 5.7, 5.8 or 5.12 of the Project Agreement.

Recapture Percentage shall mean, for the following Annual Periods, the applicable percentage to be used for multiplying Recapture Amounts when the Relocation Reduction in question occurs in such Annual Period:

<u>Annual Period</u> <u>(both dates inclusive)</u>	<u>Recapture</u> <u>Percentage</u>
Inducement Date – 6/30/2011	100%
7/1/10 – 6/30/13	85%
7/1/13 – 6/30/15	70%
7/1/15 – 6/30/16	55%
7/1/16 – 6/30/17	40%
7/1/17 – 6/30/18	30%
7/1/18 – 6/30/19	20%
7/1/19 – End of Term	10%

Reduction shall mean a Relocation Reduction or a Non-Relocation Reduction, as the context indicates.

Relocation Reduction shall mean a Base Employment Reduction resulting from (i) any transfer or relocation of Eligible Employees to a location outside of the City, (ii) any replacement or substitution of Eligible Employees with other employees located at a location outside of the City, or (iii) any transfer, relocation or establishment of operations or facilities, including, but not limited to, the Headquarters, to a location outside of the City.

Relocation Reduction Annual Period shall mean the Reported Annual Period with respect to and during which a Relocation Reduction shall have occurred.

Remaining Energy Cost Savings Benefit shall mean the amount of Energy Cost Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Energy Cost Savings made available to the Company during the Term as of the end of the most recent Annual Period from the Maximum Energy Cost Savings Amount.

Remaining Sales Tax Benefit shall mean the amount of Sales Tax Savings remaining and unutilized and calculated as equal to the positive difference by subtracting the Sales Tax Savings made available to the Company during the Term as of the end of the most recent Annual Period from the Maximum Sales Tax Savings Amount.

Reported Annual Period shall mean the immediately preceding Annual Period with respect to which a certification of the Company shall be delivered under Section 3.8 of the Project Agreement.

Requisite Contract Language shall have the meaning assigned to such term in Section 3.2(a) of the Project Agreement.

Resolution shall mean, collectively, the resolutions of the Agency adopted on June 12, 2001 and on November 13, 2001, authorizing among other things, the Project, the execution hereof and the grant of Benefits as contemplated herein.

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

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Company in accordance with and substantially in the form set forth in the appendices to this Agreement, and shall include any and all amendments or restatements thereof.

Sales Tax Penalty Amount shall be an amount payable by the Company which at the Company's option shall be satisfied either (A) (1) by payment to the N.Y.S. Department of Taxation and Finance in an amount equal to the Sales Tax Savings together with any applicable penalties or interest otherwise payable with respect to each such unauthorized Sales and Use Tax Exemption (collectively, the "Government Penalty Amount"), (2) by delivery of evidence reasonably satisfactory to the Agency of such payment, and (3) by payment to the Agency of an amount equal to

the excess, if any, of (i) an amount equal to twelve percent (12%) per annum (or, if the Company acted in bad faith or engaged in willful misconduct with respect to such unauthorized use, eighteen percent (18%) per annum) multiplied by the Sales Tax Savings resulting from each such unauthorized Sales and Use Tax Exemption, calculated from each date on which such Sales Tax Savings were realized by the Company, over (ii) the Government Penalty Amount or (B) by payment to the Agency or the N.Y.S. Department of Taxation and Finance of an amount equal to the Sales Tax Savings resulting from each unauthorized Sales and Use Tax Exemption together with interest thereon at the rate of twelve percent (12%) per annum (or 18% per annum, in the event of bad faith or willful misconduct of the Company as described above) calculated from each date on which such Sales Tax Savings were realized by the Company.

Sales Tax Savings shall mean all exemptions of Sales and Use Taxes actually realized by the Company pursuant to this Agreement, any of the Lease Agreements and/or the Sales Tax Letter by reason of the Agency's interest in the Project Property or any part thereof. Sales Tax Savings are subject to the Maximum Growth Credit Amount as defined herein.

State shall mean the State of New York.

Tax Collecting Entity shall mean the New York State Department of Taxation and Finance or other appropriate governmental authority having jurisdiction with respect to the collection or payments of Sales and Use Taxes.

Term or Term of this Agreement, when such phrase is used herein, shall mean that period commencing on the Lease Commencement Date and terminating on the Project Termination Date.