

Lease
Agreement

EXECUTION COPY

LEASE AGREEMENT

Dated as of January 1, 2002

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

SUNSET CITY WAREHOUSE, LLC

City Merchandise Inc. Project

Affecting the Land generally known by the street address
248/252 40th Street
(a/k/a 243/263 41st Street)
in the County of Kings
City and State of New York
as more particularly described in
Exhibit A to this Lease Agreement
and which is also known as
Block 712, Lot 28
on the Official Tax Map of Kings County

Record and Return to:
WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes, III, Esq.

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of January 1, 2002 (this "**Agreement**"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), party of the first part, having its principal office at 110 William Street, New York, New York 10038, and **SUNSET CITY WAREHOUSE LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware (the "**Lessee**"), party of the second part, having its principal office at 241 41st Street, Brooklyn, New York 11232.

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and City Merchandise Inc., Arrow Novelty Company, Inc., Souvenir Distribution, Inc. and Young America Merchandise Corporation, corporations duly organized and existing under the laws of the State of New York (collectively, the "**Sublessee**") and affiliated with the Lessee to induce the Lessee and Sublessee to commence the acquisition, improvement and equipping of a commercial facility "a project" within the meaning of the Act (the "**Project**") within the territorial boundaries of The City of New York and located on that certain lot, piece or parcel of land generally known as and by the street address 248/252 40th (a/k/a 243/263 41st Street), Brooklyn, New York 11232 (the "**Land**") and otherwise described in Exhibit A attached hereto; and

WHEREAS, the Project will consist of the acquisition of the Land and the acquisition, improvement and equipping of one building with an aggregate square footage of approximately 31,000 square feet all for use by the Lessee and Sublessee as warehousing and commercial space in connection with their souvenir business (the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories

incorporated therein), subject to the terms hereof, are collectively referred to herein as the “**Facility**”); and

WHEREAS, to facilitate the Project, the Agency, the Lessee, and the Sublessee have entered into negotiations to enter into a “straight-lease transaction” within the meaning of the Act in which the Agency will acquire fee simple title to the Facility and the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on December 11, 2001, the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the acquisition of the Facility by the Agency and the lease of the Facility by the Agency to the Lessee for sublease to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee through a straight-lease transaction has been determined to be necessary to induce the Lessee to proceed with the Project and thereby to retain jobs in New York City; and if the Agency does not provide such financial assistance, the Lessee and the Sublessee could not feasibly proceed with the Project; and

WHEREAS, Independence Community Bank (the “**First Mortgagee**”) has agreed to enter into a First Mortgage, dated January 3, 2001 (the “**First Mortgage**”), from the Lessee and the Agency to the First Mortgagee, simultaneously with the execution and delivery of this Agreement, and pursuant to the First Mortgage to lend to the Lessee, in accordance with the terms thereof, \$1,200,000 for the purpose of financing a portion of the costs of the Project; and

WHEREAS, in order to evidence its obligation to repay the loan made by the First Mortgagee to it pursuant to the First Mortgage, the Lessee, simultaneously with the execution and delivery thereof, will issue to the First Mortgagee a promissory note (the “**First Mortgage Note**”) in the principal amount of the First Mortgage; and

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

WHEREAS, the Empire State Certified Development Corporation (“**Bridge Loan Mortgagee**”) has agreed to enter into a Bridge Mortgage, dated January 3, 2001 (the “**Bridge Mortgage**”), from the Lessee and the Agency to the Bridge Loan Mortgagee, simultaneously with the execution and delivery of this Agreement, and pursuant to the Bridge Mortgage to lend to the Lessee, in accordance with the terms thereof, \$960,000 for the purpose of financing a portion of the costs of the Project; and

WHEREAS, in order to evidence its obligation to repay the loan made by the Bridge Loan Mortgagee to it pursuant to the Bridge Mortgage, the Lessee, simultaneously with the execution and delivery thereof, will issue to the Bridge Loan Mortgagee a promissory note (the “**Bridge Mortgage Note**”) in the principal amount of the Bridge Mortgage; and

WHEREAS, in order to secure the obligations of the Lessee to the Bridge Loan Mortgagee under the Bridge Mortgage Note, the Lessee and the Agency will grant a mortgage on the Facility to the Bridge Loan Mortgagee, subject to permitted encumbrances thereon, pursuant to the Bridge Mortgage; and

WHEREAS, [upon substantial completion of the Facility,] Empire State Certified Development Corporation and U.S. Small Business Administration (collectively, the “**Second Mortgagee**”) has agreed to enter into a Second Mortgage (the “**Second Mortgage**”), from the Lessee and the Agency to the Second Mortgagee, and pursuant to the Second Mortgage to lend to the Lessee, in accordance with the terms thereof, \$990,000 for the purpose of financing a portion of the costs of the Project; and

WHEREAS, in order to evidence its obligation to repay the loan made by the Second Mortgagee to it pursuant to the Second Mortgage, the Lessee will issue to the Second Mortgagee a promissory note (the “**Second Mortgage Note**”) in the principal amount of the Second Mortgage; and

WHEREAS, in order to secure the obligations of the Lessee to the Second Mortgagee under the Second Mortgage Note, the Lessee and the Agency will grant a mortgage on the Facility to the Second Mortgagee, subject to permitted encumbrances thereon, pursuant to the Second Mortgage; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Bargain and Sale Deed With Covenants Against Grantor's Acts, dated the date hereof (the “**Deed**”), good and marketable fee simple title to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Lessee the Agency's interest in the Facility; and

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

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

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

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

Agreement shall mean this Agreement and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean a commercial facility for use in connection with the Sublessee's business of importing and distributing electronic products.

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

Authorizing Resolution shall mean the resolution adopted by the Agency on December 11, 2001, authorizing among other things, the undertaking of the Project, the acquisition of the Facility by the Agency and the lease of the Facility by the Agency to the Lessee for sublease to the Sublessee.

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

Bridge Loan Mortgagee shall mean Empire State Certified Development Corporation, not for profit corporation organized and existing under the laws of the State of New York, and its successors and assigns under the Bridge Mortgage.

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

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

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.

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

Commencement Date shall mean January 3, 2001 on which date this Agreement was executed and delivered.

Deed shall mean the Deed referred to in the recitals to this Agreement.

EDC shall mean New York City Economic Development Corporation, a not-for-profit local development corporation organized under the laws of the State of New York, and its successors or assigns.

Eligible Materials shall mean construction materials and tangible personal property to be used by the Lessee to make capital improvements on the Facility Realty.

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

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

Facility shall mean, collectively, the Facility Realty and the Facility Equipment.

Facility Equipment shall mean that machinery, equipment and other tangible personal property acquired and installed in accordance with the Sales Tax Letter as part of the Project pursuant to Section 2.2 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Lessee's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof), as more particularly described in Exhibit B "Description of the Facility Equipment" hereto, which is made a part of this Agreement. "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personalty which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, *objects d'art* or other similar decorative items.

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

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

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

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

First Mortgagee shall mean Independence Community Bank, a banking corporation organized and existing under the laws of the State of New York, and its successors and assigns under the First Mortgage and the Bridge Mortgage.

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

Guarantors shall mean the Lessee, the Sublessee and Jack Gindi.

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

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

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

Land shall mean that certain lots, pieces or parcels of land generally known by the street address 248/252 40th (a/k/a 243/263 41st Street), Brooklyn, New York 11232, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Lessee shall mean Sunset City Warehouse, LLC, a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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

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

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

Mortgage Notes shall mean, collectively, the First Mortgage Note, the Bridge Mortgage and Second Mortgage Note referred to in the recitals to this Agreement and shall include any and all amendments thereof and supplements thereto hereafter made in conformity with the Mortgages.

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

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

Permitted Encumbrances shall mean:

- (i) this Agreement, the Sublease Agreement and the Mortgages;

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

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

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

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

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

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

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

PILOT Depository shall mean The Bank of New York, a corporation organized and existing under the laws of the State of New York, and its successors and/or assigns or such other entity as the Agency may from time to time designate by written notice to the Lessee.

Prohibited Person shall mean (i) any Person (a) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, or (b) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (ii) any Person (a) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (b) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Project shall mean the acquisition of the Land and the acquisition, construction and installation of the Improvements and the Facility Equipment thereon or therein, all for use by the Lessee or the Sublessee as an Approved Facility.

Project Cost Budget shall mean that certain budget for costs of the Project as set forth by the Lessee in Exhibit C - "Project Cost Budget" attached to this Agreement.

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

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

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

State shall mean the State of New York.

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

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

Second Mortgagee shall mean collectively the Bridge Loan Mortgage and U.S. Small Business Administration, a corporation organized and existing under the laws of the United States of America , and its successors and assigns under the Second Mortgage.

Sublease Agreement shall mean that certain Sublease Agreement, dated as of January 1, 2002, by and between the Lessee, as sublessor, and the Sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms hereof.

Sublessee shall mean collectively City Merchandise Inc., Arrow Novelty Company, Inc., Souvenir Distribution Inc. and Young America Merchandise Corp., corporations duly organized and existing under the laws of the State of New York, and its respective permitted successors and assigns under the Sublease Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Lessee is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in the State of New York, is not in violation of any provision of its articles of organization or operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to

execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party. The Lessee is duly qualified to do business in every jurisdiction in which such qualification is necessary.

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

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

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

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

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

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

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

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

(j) This Agreement and each other Project Document to which the Lessee is a party (except for those Project Documents, if any, not executed and delivered as of the Closing Date) constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

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

(l) The Mortgage Notes shall evidence the obligation of the Lessee to repay the loan made by the First Mortgagee, the Bridge Loan Mortgagee and Second Mortgagee to the Lessee pursuant to the Mortgages for purposes of financing a portion of the costs of the Project.

(m) The Project Cost Budget attached as Exhibit C to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that at least ten percent (10%) of the aggregate of the costs of the Project will be provided from equity funds on the part of the Lessee or the Sublessee.

(n) The amounts to be provided to the Lessee pursuant to the Mortgages, together with other moneys available to the Lessee, are sufficient to pay all costs in connection with the completion of the Project.

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

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

(q) Neither the Lessee, any Sublessee, nor any Affiliate of either is a Prohibited Person.

(r) The aggregate rentable square footage of the Improvements constituting part of the Facility is 31,000 and the aggregate square footage of the Land is 49,900 square feet.

(s) The Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1. The Deed. The Agency has acquired, for good and valuable consideration therefor, pursuant to the Deed, good and marketable fee simple title to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) good and marketable fee simple title to all Improvements and good and merchantable title to all Facility Equipment intended to be incorporated or installed in the Facility as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest title to such Improvements and Facility Equipment in the Agency and to protect such title against claims of any third parties.

Section 2.2. The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring the Land and acquiring the Improvements and the Facility Equipment thereon or therein, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in undertaking the Project from funds made available therefor in accordance with or as contemplated by this Agreement and the Mortgages, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, no later than February 28, 2002, and that such completion will be effected in a first class workmanlike manner, using appropriate materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement, provided, however, the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency. The cost of the Project shall be financed from (i) proceeds of the Mortgages, (ii) funds of the Lessee or an officer thereof in the aggregate amount of \$600,000 and (iii) other funds of the Lessee to the extent such funds shall be necessary to cover costs of the Project which exceed such other sources of funds. In the event that moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1

hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

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

(d) The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Lessee, attached hereto as Schedule D, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee, (i) that the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that the Agency has good and valid marketable fee simple title to the Facility Realty (which may be based on a title insurance policy continuation update) and good and merchantable title in the Facility Equipment and that all property constituting the Facility is subject to this Agreement and the Sublease Agreement, subject only to Permitted Encumbrances, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project.

Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Lessee or any Sublessee against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) that no Person other than the Agency may benefit therefrom. Such certificate of the Authorized Representative of the Lessee shall be accompanied by (i) a temporary or permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of the Project have been paid in full, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project; (iii) the Final Project Cost Budget together with evidence reasonably satisfactory to the Agency that at least ten percent (10%) of the aggregate costs of the Project were paid from equity funds of the Lessee or of the Sublessee or a respective officer thereof; (iv) evidence satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 hereof, in respect of the Facility have been paid in full; (v) a survey of the Land and Improvements prepared by a licensed surveyor at the Lessee's sole cost and expense, which survey shall (1) be certified to the Agency, the Lessee, each Sublessee, the title insurance company, the First Mortgagee, the Bridge Loan Mortgagee and the Second Mortgagee, (2) locate the Improvements constructed as part of the Facility without any encroachment by any Improvements on premises adjoining the Land, (3) show the location of all Improvements constituting part of the Facility within lot and building lines in compliance with the applicable zoning requirements, and (4) indicate all rights of way and rights of others of record with respect to the Facility; and (vi) a final endorsement to the title insurance policy theretofore delivered

under Section 2.3 hereof, indicating that since the issuance of the title insurance policy there has been no change in the state of title and no survey exceptions not theretofore approved by the Agency, which endorsements shall contain no exception for inchoate mechanic's liens (with such affirmative insurance relating thereto as the Agency shall reasonably require) and shall have the effect of redating such policy to the date of completion. Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

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

Section 2.3. Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a fee title insurance policy in an amount not less than \$500,000 insuring the Agency's fee simple interest in the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of the Land certified to the Agency, the Lessee, the Sublessee, the First Mortgagee, the Bridge Loan Mortgagee, the Second Mortgagee and the title company issuing such title insurance policy and the Agency. Any proceeds of such fee title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's fee title interest shall be applied to the payment of any Rental Payments due hereunder; and any balance thereafter may be used by the Lessee for any corporate purpose.

Section 2.4. Reserved.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

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

(b) The Lessee hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Facility will be an Approved Facility and a "project" within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be an Approved Facility or a "project" within the meaning of the Act. The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof

to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on January 3, 2027, or such earlier date as this Agreement may be terminated as hereinafter provided.

The Lessee hereby covenants, simultaneously with its execution and delivery of this Agreement, to enter into, execute and deliver the Sublease Agreement with each Sublessee. Under the terms of the Sublease Agreement, each Sublessee has covenanted, among other things, to keep and perform all of the terms of this Agreement, and the Sublessee has agreed to pay or cause to be paid sublease rentals to the Lessee in an amount and at times which will at least equal the lease rentals to be paid by the Lessee hereunder.

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

(b) *Additional Rent.* Throughout the term of this Agreement, the Lessee shall pay to the Agency (except as otherwise provided in Section 4.3 hereof) any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

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

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

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

Section 3.6. Assignment of Sublease Agreement. In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency, subject to any assignment, collateral or otherwise, from the Lessee to the First Mortgagee, the Bridge Loan Mortgagee and/or the Second Mortgagee, all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals (needed to make payments under the Lease Agreement and the Mortgages), revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder.

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

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

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

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

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

(iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility

shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iv) if the cost of such additions or alterations is estimated to exceed \$200,000, such alterations or additions shall be conducted only after the Lessee shall have furnished to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency, and

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

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement and the Sublease Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title to such property to the Agency and to subject such property to this Agreement and the Sublease Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at the Lessee's own cost and expense (the "**Lessee's Property**") without conveying title to such Lessee's Property to the Agency nor subjecting such Lessee's Property to this Agreement and the Sublease Agreement. The Lessee's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

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

Section 4.2. Removal of Property of the Facility. (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (in either case, the "**Existing Facility Property**") and thereby acquiring such Existing Facility Property, **provided, however,** no such removal shall be effected if (v) such removal is to another location other than the Facility Realty, (w) such removal would change the nature of the Facility as an Approved Facility or a "project" within the meaning of the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal. The evaluations made under (v), (w), (x) or (y) of this Section 4.2(a) may be made after taking into account property installed or placed upon the Facility in substitution or replacement of such removed property.

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

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

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

Section 4.3. Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition of real property and the construction, renovation and equipping of two buildings thereon with an aggregate square footage of 41,000 square feet, all to be used as warehousing and commercial space in connection with the Lessee and/or Sublessee's souvenir business. The Facility Realty is located at 248/252 40th Street (a/k/a 243/263 41st Street), being Block 712 and Lot 28 on the Official Tax Map of Kings County.

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

The PILOT Commencement Date shall be July 1, 2002. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Lessee and not owned by the Agency.

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

It is recognized that under the provisions of the Act the Agency is generally required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty, payable to the PILOT Depository, in the manner and at the time provided in subsection (g) below or at such other times as the Agency may designate in writing. Except as otherwise provided below in this Section 4.3, the Lessee shall make payments in lieu of real estate taxes (i) with respect to the Land constituting part of the Facility Realty, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements constituting part of the Facility Realty, in the amounts as determined in subsections (e) and (f) below.

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

of New York or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

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

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

For the period commencing on the PILOT Commencement Date and terminating on the earliest to occur of (i) June 30, 2027 (the "**PILOT Expiration Date**"), or (ii) the date on which the Agency no longer owns the Facility Realty, or (iii) the date on which this Agreement is terminated if termination occurs prior to the PILOT Expiration Date (such earliest date to be hereinafter referred to as the "**PILOT Termination Date**"), the Lessee shall, in accordance with Section 4.3(g) hereof, make no payments in lieu of real estate taxes with respect to the Land (subject to Section 4.3(i) hereof) except as follows: for July 1, 2023 to June 30, 2024, a payment equal to 20% of Full Land Taxes (as defined below) for that year; for July 1, 2024 to June 30, 2025, a payment equal to 40% of Full Land Taxes for that year; for July 1, 2025 to June 30, 2026 a payment equal to 60% of Full Land Taxes for that year; and for July 1, 2026, to June 30, 2027, a payment equal to 80% of Full Land Taxes for that year.

"**Full Land Taxes**" shall mean that amount of taxes with respect to the Land constituting part of the Facility Realty as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land.

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

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

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

- (1) the PILOT Commencement Date through June 30, 2023, an amount equal to the lesser of CRET (i.e., Current Real Estate Taxes), and STRET (i.e., Stabilized Real Estate Taxes); and
- (2) from July 1, 2024, through the PILOT Termination Date, and assuming CRET is greater than STRET for the fiscal years occurring within such period, the following amounts as respectively calculated for the following years:

YEAR	LESSEE PAYS:
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July 1, 2023- June 30, 2024	STRET + [(CRET less STRET) x 0.2]
July 1, 2024-June 30, 2025	STRET + [(CRET less STRET) x 0.4]
July 1, 2025-June 30, 2026	STRET + [(CRET less STRET) x 0.6]
July 1, 2026-June 30, 2027	STRET + [(CRET less STRET) x 0.8]

Provided, however, that if any fiscal year occurring within the period commencing July 1, 2024, through June 30, 2027, CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such fiscal year shall equal CRET.

Certain terms used in the above formula are defined as follows:

CRET or "**Current Real Estate Taxes**" shall mean the then-current assessed value of Improvements multiplied by the City's then-current real estate tax rate (as reduced by any abatement or exemption made available to the Lessee through the City Industrial and Commercial Incentive Program, or any successor program), as if the Facility Realty were owned by the Lessee rather than the Agency.

STRET or "**Stabilized Real Estate Taxes**" shall mean (A) the *sum* of (i) the assessed value of the Improvements as of May 25, 2001, multiplied by the product of the City's tax rate as of July 1, 2001 and the portion of the Improvements occupied by the Lessee, the Sublessee and Affiliates of the Lessee and Sublessee, and (ii) CRET multiplied by the portion of the Improvements occupied by any Person other than the Lessee, any Sublessee, or Affiliates of the Lessee and any Sublessee. The portion of the Improvements occupied by the Lessee, any Sublessee, Affiliates of the Lessee and any Sublessee may change from year to year.

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

(f) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project, the Lessee shall make any alterations of or additions to the Facility Realty ("**Additional Improvements**"), the Lessee shall: (i) deliver written notice to an Authorized Representative of the Agency of such Additional Improvements within thirty (30) days after the completion thereof; and (ii) request that the Improvements constituting a part of the Facility Realty (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof equal to

(1) the amount of increase in assessed valuation of the Facility Realty, when the Additional Improvements are first assessed as completed, **multiplied by**

(2) the City's real property tax rate prevailing after such first assessment, and thereafter, less

(3) but only with respect to the Additional Improvements and not with respect to any other portion of the Facility Realty, any amount to which the Lessee would be entitled as a result of the Additional Improvements being eligible under the Industrial and Commercial Incentive Program or any successor program.

(g) *General Payment Provisions:*

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

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

In the event the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid, and the Lessee agrees to pay the same to the PILOT Depository, or to such other representative of the Agency as the Agency may from time to time designate. The Lessee shall pay a late payment penalty of five per cent (5%) of any amount which is not paid when due under this Section 4.3. In addition, for each month or part thereof that a payment under this Section 4.3 is delinquent beyond the first month, interest shall accrue and be payable by the Lessee on the total amount due as provided above, plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made.

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date of transfer of title out of the Agency and back to the Lessee. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the fiscal year in which such transfer is made, shall be responsible for paying the real estate taxes due for the remaining portion of such fiscal year which follows transfer out of the Agency.

With respect to the semi-annual period of the fiscal year in which the Agency conveys title to the Facility Realty back to the Lessee, the Agency shall cause the Collector of the City to apportion that part of the installment payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of conveyance and ending on the June 30 or December 31 following (as the case may be), as a credit against the real estate taxes owed for such semi-annual period.

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

The Lessee understands and agrees that the Lessee is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Land and Improvements constituting the Facility Realty for that portion of the Facility Realty, if any, utilized or occupied by any Person other than the Lessee, Affiliates of the Lessee or any Sublessee for so long as such utilization or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized or occupied or is intended to be utilized or occupied by Persons other than the Lessee or any Affiliate thereof. The Lessee agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Facility Realty utilized or occupied by any Person other than the Lessee, Affiliates of the Lessee or any Sublessee. The Lessee understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Lessee as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Facility Realty for that portion of the Facility Realty utilized or occupied by Persons other than the Lessee or Affiliates thereof for so long as such utilization or occupation shall continue. The Lessee further agrees to furnish the Agency, in substantially the form provided in Schedule B attached hereto, with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth inter alia, all Persons other than the Lessee, any Sublessee or Affiliates of the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Land and Improvements constituting a part of the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee. For purposes of the determination of such payments in lieu of real estate taxes, the tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *Survival of Obligations:*

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

Section 4.4. Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Sublease Agreement, any estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable hereunder or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's ownership of the Facility, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the

Impositions which would have been imposed on the Facility if the Lessee were the owner of record of the Facility.

Section 4.5. Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain or cause to be maintained insurance, 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 Lessee or the Sublessee, including, without limitation:

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the commercial general liability referred to below, Owners & Contractors Liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$5,000,000 aggregate coverage for personal injury and property damage;

(ii) Property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction of the Facility, Builders' All Risk insurance, whether by endorsement or otherwise, written on 100% builders' risk completed value, non-reporting form including coverage therein for completion and/or premises occupancy, all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the Facility 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 Lessee and 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 Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency) not less often than once every year, at the expense of the Lessee;

(iii) Commercial general liability in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available), (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate, **provided, however,** that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

(iv) Boiler and machine property damage insurance with respect to any steam and pressure boilers and similar apparatus located at the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises and in each case approved by the Agency;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, the Sublessee or the Agency is required by law to provide; and

(vi) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require as set forth in a written notice from an Authorized Representative of the Agency submitted to an Authorized Representative of the Lessee.

(b) All insurance required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State having a "XIII/A" rating or better by A.M. Best & Co.

(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 insurance) the Lessee and the Agency as additional insureds as their respective interests may appear;

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

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

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

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

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

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

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

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Lessee, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency duplicate originals insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.5. At least thirty (30) days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5, and shall cause any sublessee, contractor or other insuring party under this Section 4.5 to take similar action with respect to such party's insurance required hereunder. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

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

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

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

Section 4.7. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "**Legal Requirements**"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or

other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

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

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

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

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

(ii) exercise its option to purchase the Agency's interest in the Facility and to terminate this Agreement as provided in Section 8.1 hereof.

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

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

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

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

(iii) be effected only if the Lessee shall deliver to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency, and

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

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

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

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

(g) Subject to the provisions of the Mortgages, the Lessee shall be entitled to any insurance proceeds, condemnation awards, compensation or damages attributable to the Lessee's Property.

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

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

ARTICLE VI

PARTICULAR COVENANTS

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

The Lessee further represents, covenants and agrees that it is and through the term of the Lease Agreement will continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be duly qualified to do business in the State and not constitute a Prohibited Person.

Section 6.2. Indemnity. (a) The Lessee 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, expenses 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), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or the Sublessee or their respective directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Lessee or any other Person who may be about the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Lessee's knowledge and based on information included in the Phase I Environmental Audit prepared by Middleton Environmental (the "**Environmental Auditor**"), dated December 19, 2001, are true and complete copies of which the Lessee has delivered to the Agency (collectively, the "**Audit**"), no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Lessee shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with

all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Lessee shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however**, that if any such tenant or subtenant shall be an Affiliate of the Lessee, the obligation of the Lessee with respect to such Persons shall be absolute and not limited to best efforts. The Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party 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 affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 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 Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated in Section 4.6 hereof and throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

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

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only his own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the

termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Agency relating to the enforcement of the provisions herein specified.

(f) For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(g) On or before the Commencement Date, the Lessee shall provide to the Agency a letter (the "**Phase I Reliance Letter**") from the Environmental Auditor addressed to the Agency, stating that the Agency may rely upon the Audit as if it was prepared for the Agency in the first instance.

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

On the date of execution of this Agreement, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of, an initial financing fee in the amount of \$29,400, of which \$2,500 of such fee has been received by the Agency prior to the date hereof as an application fee to the Agency. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$500 payable upon the Commencement Date and on every anniversary of the Commencement Date until the termination of this Agreement.

Section 6.4. Retention of Title to Facility; Grant of Easements; Release of Facility Realty. (a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

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

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from this Agreement and the leasehold estate created hereby and by the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements or Facility Equipment is situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty and convey title thereto to the Lessee, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of

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

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

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

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement or the Sublease Agreement, of the Agency or the Lessee or any Sublessee or against any of the Rental Payments payable under this Agreement or the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor any Sublessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments

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

Section 6.7. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND ANY AND ALL SUBLESSEES, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND ANY SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.8. Financial Statements; No-Default Certificates. (a) At the request of the Agency, the Lessee agrees to furnish to the Agency a copy of the most recent fiscal year annual reviewed financial statements of each Lessee and of each Sublessee and any of its or their subsidiaries (including balance sheets as at the end of such most recent fiscal year and the related statements of income, earnings, retained earnings and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles and practices, certified by an Independent Accountant.

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

passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

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

Section 6.9. Employment Information, Opportunities and Guidelines. (a) Annually, by August 1 of each year until the termination of this Agreement the Lessee shall submit and shall cause the sublessee to submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the Lessee and the Sublessee, respectively.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider, and cause each of his Affiliates at the Facility to first consider, persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee (on behalf of itself and the Sublessee) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the New York City Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 and any other applicable laws, rules or regulations. In addition, upon the Agency’s request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessee which is pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or the Sublessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

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

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

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

Section 6.13. Identification of Facility Equipment. All machinery, equipment, apparatus and other property constituting Facility Equipment shall be properly identified by the Lessee by such appropriate records and designations as shall be approved by the Agency.

Section 6.14. Violations. Within sixty (60) days of the Commencement Date, the Lessee shall deliver to the Agency evidence that any and all existing violations have been cleared or discharged of record and any fines imposed in connection therewith, if any, have been paid.

Section 6.15. Donation of Profit on Wholesale Proceeds.

(a) **Representations.** Lessee represents that:

1. Lessee has manufactured a lot of approximately 500,000 picture-post card souvenirs (respectively, the "Lot" and the "Card(s)") with the following legend printed on each Card: *Proceeds will e donated to the survivors of the rescue workers who died saving victims of attack on America.*

2. Lessee has sold and will continue to sell the Cards to retailers for approximately 25 cents per Card, out of which wholesale price approximately 5 cents is Profit (whether per Card or in the aggregate, the "Profit").

3. Through computerized inventory coding, Lessee is able to readily identify how many Cards have been delivered to retailers. As of the date of the signing of this Agreement, Lessee has delivered approximately half of the Lot to retailers; the wholesale price on these delivered Cards is approximately \$13,000.

4. Payment terms offered by Lessee to its retailers typically are 60 to 90 days. As of the date of the signing of this Agreement, Lessee has not as yet received payment from its retailers for all portions of the Lot that Lessee has delivered to those retailers.

5. Lessee expects to sell the entire Lot of the Cards by the end of January by which time Lessee shall have selected an appropriate charity or charities (that satisfy the description provided in the legend referred to aforesaid)(in the singular or collectively, the "Charity") to receive the Profit as a charitable donation.

(b) Covenants. Lessee covenants to do and perform the following and agrees as follows:

1. Lessee shall notify the Agency in writing no later than January 31, 2002, of the name(s) and address(es) of the Charity.

2. Lessee shall donate the Profit to the Charity no later than February 28, 2002, and shall immediately thereafter notify the Agency in writing that the Lessee has made this donation, providing reasonable evidence thereof.

3. Lessee agrees that if it is unable to sell the entire Lot of the Cards, the cost of the unsold Cards will not be deducted from the Profit donated to the Charity.

4. Lessee agrees that if the Lot of Cards is sold out and Lessee therefore decides to manufacture a new lot of the Cards (in addition to the Lot), Lessee shall notify the Agency in writing of its intention in this respect and that as a condition to selling any portion of this new lot, Lessee and the Agency shall have agreed in writing as to a date by which the Profit from this new lot will be donated to the Charity.

5. Lessee, upon reasonable notice from the Agency, shall provide to personnel and/or agents designated by the Agency, access to the Lessee's records, electronic or otherwise, for the purposes of verifying the size of the Lot of Cards (or subsequent lot) and the manufacturing costs thereof; contracted sales to retailers; deliveries to retailers; payments collected from retailers; donations made to the Charity including the amount of Profit donated and the date of the donations; and any other recorded or written information pertaining to the Cards, the Profit, and the donation of the Profit. Lessee shall, upon written notice from the Agency, provide to the Agency an accounting of the donation(s) of Profit to the Charity; and the Agency shall have a right to audit the records, electronic or otherwise, of Lessee with respect to same.

(c) Survival. The terms and conditions of this Section 6.15, and the obligations and rights hereunder of Lessee and the Agency, respectively, shall survive the expiration or earlier termination of this Agreement.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 7.6, 8.4, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, any Sublessee or any Guarantor, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee, any Sublessee or any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Lessee, any Sublessee or any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee or the

Sublessee or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

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

(g) The commencement of proceedings to foreclose the lien of Mortgages or of any other mortgage or lien on the Facility Realty;

(h) Any loss of title by the Agency to the Facility Realty;

(i) An "Event of Default" under the Guaranty Agreement or the Sublease Agreement shall occur and be continuing; or

(j) The Lessee, any Sublessee or any Guarantor shall become a Prohibited Person.

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

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, a deed therefor as required by law, and a bill of sale, and the Lessee hereby waives delivery and acceptance of such deed and 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 recording of such deed; or

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

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

(d) The Agency may require the Lessee to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount which the Lessee would otherwise be required to pay if it were the owner of the Facility Realty; or

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

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the

Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.4, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

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

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

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

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1. Option to Purchase Facility and to Terminate Agreement. (a) The Lessee shall have the option to purchase the Agency's interest in the Facility and to terminate this Agreement on any date during the term hereof by paying all Rental Payments due hereunder. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to an Authorized Representative of the Agency stating that the Lessee has elected to exercise his option under this Section 8.1(a) and the date on which such purchase and termination is to be made. In addition,

the Lessee 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 Lessee, in purchasing the Agency's interest in the Facility 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 Lessee shall not, at any time, assign or transfer its option to purchase the Agency's interest in the Facility as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.3 hereof without the prior written consent of the Agency.

Section 8.2. Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) a bargain and sale deed without covenants against grantor's acts and all other necessary documents conveying to the Lessee all of the Agency's right, title and interest in and to the Facility and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.4, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3. Reserved.

Section 8.4. Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the Abatement Termination Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Lessee or any successor thereto shall terminate this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee shall accept pursuant to deed (without covenants) from the Agency title to the Facility and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.4, 8.5, and 9.13 hereof. In the event that the Lessee does not accept title to the Facility and terminate this Agreement within such forty-five (45) day period, then commencing on the forty-sixth (46th) day after transmittal of the notice requesting termination as above provided, the Lessee shall in addition to all other payment obligations due to the Agency hereunder make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have accepted title to the Facility and terminated this Agreement in accordance with the provisions hereof.

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

(a) (i) If there shall occur a Recapture Event (as defined below) prior to the completion of the Project and the occupancy of the Facility for its intended purposes by the Lessee and the Sublessee, the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, all Benefits (as defined below).

(ii) If there shall occur a Recapture Event after the date on which the Project shall have been substantially completed (which shall be that date as stated in the certificate of an Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof, but not later than February 28, 2002, (the "**Operations Commencement Date**")), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first (6) years after the Operations Commencement Date;

(B) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;

(C) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;

(D) forty per cent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date; or

(E) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

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

(1) all real estate tax benefits which have accrued to the benefit of the Lessee during such time as the Agency was the owner of the Facility Realty by reason of the Agency's ownership, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee would have been required to pay during the term of this Agreement (within the meaning of Section 3.2 hereof) had the City determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such term; and

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

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

(1) The Lessee or any Sublessee shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Lessee or any Sublessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another

facility or otherwise, or whether to another facility either within or outside of the City);

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

(4) The Lessee or any Sublessee shall have effected a substantial change in the scope and nature of the operations of the Lessee or the Sublessee at the Facility;

(5) The Lessee or any Sublessee shall have subleased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency; or

(6) The Lessee or any Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate, or (iii) in the event the Lessee and the Sublessee shall have relocated the Facility to another site within the City during the ten (10) years following the Operations Commencement Date, *provided that* the Lessee and each Sublessee maintain employment levels which are equal to at least 90% of the number of employees employed by the Lessee and the Sublessee at the time the Facility is relocated.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof made within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms of such Recapture Event and/or disposition.

(c) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the City's Department of Finance on delinquent payments until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

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

ARTICLE IX

MISCELLANEOUS

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

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

Section 9.2. Priority. Pursuant to the Mortgages, the Agency and the Lessee will grant to the First Mortgagee, the Bridge Loan Mortgagee and Second Mortgagee a [first and second mortgage lien] on and security interests in the Facility Realty as security for the payment of amounts due under the Mortgage Notes. This Agreement shall be subject and subordinate to the Mortgages and to such mortgage liens and security interests so created thereby; provided, however, that nothing in said mortgage shall impair the Agency's ability to enforce its rights hereunder against the Lessor.

Section 9.3. Assignment or Sublease. (a) The Lessee shall not at any time (i) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility, except pursuant to the Sublease Agreement, without the prior written consent of the Agency (which consent of the Agency will be based upon satisfaction of the Agency's subletting policies as in effect from time to time), and provided that

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

(ii) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) any assignee or transferee of the Lessee or any sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

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

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

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

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

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

(ix) each such sublease contains such other provisions as the Agency may reasonably require.

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

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

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

acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

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

(e) The limitations in this Section 9.3 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and any sub-subletting in whole or in part of the Facility, except that the Sublease Agreement may be assigned as contemplated by any assignment, collateral or otherwise from the Lessee to the First Mortgagee, the Bridge Loan Mortgagee and/or the Second Mortgagee, all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder.

(f) The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2003, a certificate of an Authorized Representative with respect to all tenancies in effect at the Facility Realty, in the form attached hereto as Schedule B.

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

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

(y) if to the Agency, to the Chairperson, 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.

(z) if to the Lessee, to Sunset City Warehouse, LLC, 241 41st Street, Brooklyn, New York 11232.

The Agency and the Lessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

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

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

(a) to the First Mortgagee, Independence Community Bank, 195 Montague Street, Brooklyn, New York 11201, Attention: Henry Ngai, Vice President.

(b) to the Bridge Loan Mortgagee, Empire State Certified Development Corporation, 633 Third Avenue, 37th Floor, New York, New York 10017, Attention: Jack O. Noël, Esq.

(c) to the Second Mortgagee, Empire State Certified Development Corporation, 633 Third Avenue, 37th Floor, New York, New York 10017, Attention: Jack O. Noël, Esq.

Section 9.6. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility.

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

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

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

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

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

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

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

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

Section 9.14. Non-Discrimination. (a) At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit the Sublessee to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

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

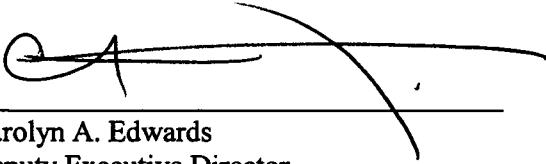
(d) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

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

Section 9.16. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on January 3, 2001.

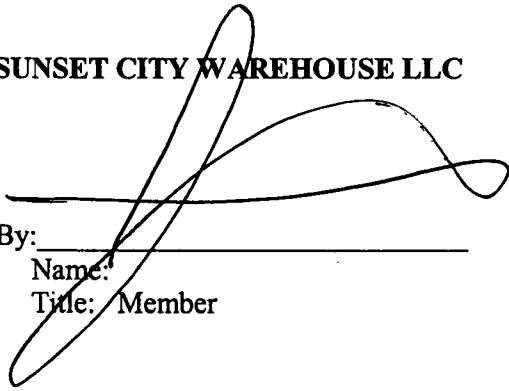
IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director or Deputy Executive Director and attested by its Secretary, an Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs and the Lessee has duly executed this Agreement 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

SUNSET CITY WAREHOUSE LLC

By: 

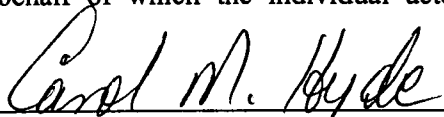
Name:
Title: Member

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 3rd day of January, in the year two thousand and two before me, the undersigned, personally appeared Carolyn A. Edwards, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

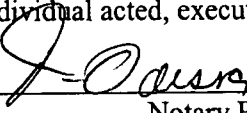
CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2003

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 3rd day of January in the year two thousand and two, before me, the undersigned, personally appeared Jack Gindi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she or he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

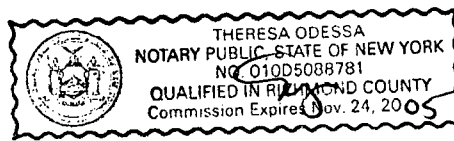


Exhibit A

DESCRIPTION OF THE LAND

DESCRIPTION OF THE FACILITY EQUIPMENT

NONE

Annual Employment Report
For the Year Ending June 30, ____

In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency must require all of its project companies to complete and return the Report to the Agency no later than August 1, ____.

Sunset City Warehouse LLC
68 34th Street
Brooklyn, New York 11232

Telephone # _____

Tax ID # _____

Please provide information as of June 30th of jobs at the Project Location(s). Do not include any subcontractors and consultants. Include only employees and owners/principals on your payroll at the Project Location.

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

Certification: I, the undersigned, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete, and that I understand it is submitted pursuant to agreement. The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the New York City Industrial Development Agency (the "Agency") and/or to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the Company's possession which is pertinent to the Company and the Company's employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this transaction.

Principal/Owner/Chief Financial Officer _____ **(Please Print)**

Signature _____ **Date** _____

QUESTIONS: Please call the IDA Compliance Helpline at (212) 312-3968.

PLEASE FAX YOUR RESPONSE TO 212-312-3918

20-- subtenant survey

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, 200**_____.

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

Subtenant	Floor	Square Footage Leased	Lease Begins	Lease Ends
-----------	-------	--------------------------	--------------	------------

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

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Sunset City Warehouse LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of January 1, 2002 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, services, machinery, equipment, materials and supplies used therefor have been paid for or arrangement for payment, as described below, has been made [insert details of payment arrangement if possible];

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

the Agency has good and valid marketable fee simple title to the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

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

\$ _____ represents the amount required for the payment of remaining Project costs;

this Certificate is given with prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate; and

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

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

SUNSET CITY WAREHOUSE, LLC

By: _____
Name:
Title:

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