

Lease

Agreement

LEASE AGREEMENT

Dated as of May 1, 2002

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

CMR PROPERTIES, LLC

(2002 Citywide Mobile Response Corp. Project)

Affecting the Land generally known by the street address
1624 Stillwell Avenue
Bronx, New York
Section 15, Block 4223 and Lot 12

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

Record and Return to:
Hawkins, Delafield & Wood
67 Wall Street
New York, New York 10005
Attention: Arthur M. Cohen, Esq.

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LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of May 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**"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **CMR PROPERTIES, LLC**, a limited liability company duly organized and existing under the laws of the State of New York (the "**Lessee**"), having its principal office at 2460 Rowe Street, Bronx, New York 10461, party of the second part;

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and Citywide Mobile Response Corp., a New York corporation (the "**Sublessee**"), for a commercial "**project**" within the meaning of the Act within the territorial boundaries of The City of New York and located on that certain lot, piece or parcel of land in Section 15, Block 4223 and Lot 12, generally known as and by the street address 1624 Stillwell Avenue, Bronx, New York (the "**Land**"); and otherwise described in Exhibit A -- "Description of Land" -- attached hereto and made a part hereof; and

WHEREAS, the project will consist of the acquisition, renovation and equipping by the Agency of a commercial facility in Bronx, New York (the "**Facility**"), consisting of the acquisition of a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto, and the acquisition and installation of machinery and equipment in connection therewith, all for use in the provision of ambulance and ambulette services to hospitals, nursing homes

and senior care facilities, to be located at 1624 Stillwell Avenue, Bronx, New York (the "**Project**"); and

WHEREAS, to facilitate the Project, the Agency, the Lessee and the Sublessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Agency will acquire fee simple title to the Land and the Improvements, (ii) the Agency will acquire title to the Facility Equipment, and (iii) the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement; and, in furtherance of such purposes, the Agency adopted a Resolution on April 16, 2002 (the "**Authorizing Resolution**"), authorizing the undertaking of the Project, the acquisition, renovation and equipping of the Facility by the Agency, the lease of the Facility by the Agency to the Lessee and the sublease of the Facility by the Lessee to the Sublessee; and

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

WHEREAS, the cost of the Project is being financed in part through (i) a loan in the principal amount of \$1,200,000 made by Fleet National Bank (the "**Mortgage**") to the Lessee (the "**Mortgage Loan**") and (ii) equity furnished by the Lessee and/or the Sublessee and/or the proceeds of additional lending; and

WHEREAS, in order to evidence its obligation to repay the Mortgage Loan, the Lessee will issue to the Mortgagee a certain mortgage note, dated May 22, 2002 (the "**Mortgage Note**"), in the principal amount of the Mortgage Loan; and

WHEREAS, in order to secure the obligations of the Lessee to the Mortgagee under the Mortgage Note, the Lessee and the Agency will grant a first mortgage on the Facility to the Mortgagee, subject to permitted encumbrances thereon, pursuant to a certain mortgage, dated May 22, 2002 (the "**Mortgage**"), from the Lessee and the Agency to the Mortgagee; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Sublessee 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 May 22, 2002 (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;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State 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, 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 Lease Agreement, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean the commercial facility located at 1624 Stillwell Avenue, Bronx, New York.

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; (ii) in the case of the Lessee, the Managing Member and any member or any other 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; and (iii) in the case of the Sublessee, the Chairman, Vice Chairman,

President, Treasurer and any Vice President or any other employee who is authorized to perform specific acts or to discharge specific duties under the Sublease Agreement and of whom another Authorized Representative of the Sublessee has given written notice to the Agency.

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

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 May 22, 2002, on which date this Agreement was executed and delivered.

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

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

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

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

Facility Equipment shall mean those items of equipment the title to which shall be acquired by or on behalf of the Agency for installation or use at the Facility Realty as part of the Project pursuant to Section 2.2 of this Agreement and described in the Description of Facility Equipment and otherwise described in Exhibit B in the Appendices attached hereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 hereof, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced, and further exclude all items of Facility Equipment removed as provided in Section 4.2 hereof.

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.

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 the Individual Guarantors and their respective permitted estates, successors and assigns.

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 or delayed).

Individual Guarantors shall mean, collectively, Henry Halpert, Robert Bleier and Judith Bleier and their respective estates, administrators and heirs.

Land shall mean that certain lot, piece or parcel of land in Block 4223 and Lot 12, generally known by the street address 1624 Stillwell Avenue, Bronx, New York, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Lessee shall mean CMR Properties, LLC, a New York limited liability company 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.

Loan shall mean the Mortgage Loan referred to in the recitals to this Agreement.

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

Mortgage shall mean the 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.

Mortgagee shall mean the Fleet National Bank, a banking corporation organized and existing under the laws of the State of New York, and its successors and assigns pursuant to the Mortgage.

Mortgage Loan shall mean the loan by the Mortgagee to the Lessee in the amount of \$1,200,000, representing the \$1,200,000 principal amount of the Mortgage, in connection with the Project.

Mortgage Note shall mean the 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 Mortgage.

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

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

Permitted Encumbrances shall mean:

(i) this Agreement, the Sublease Agreement, the Sub-sublease Agreement and the Mortgage;

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

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

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

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the 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 Realty 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, general partnership, limited liability company 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, or its successors.

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 a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto, and the acquisition and installation of machinery and equipment in connection therewith, all for use in the provision of ambulance and ambulette services to hospitals, nursing homes and senior care facilities, to be located at 1624 Stillwell Avenue, Bronx, New York.

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 Hawkins, Delafield & Wood 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 Sublease Agreement, the Guaranty Agreement, the Mortgage Note and the Mortgage.

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

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

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, dated May 22, 2002, which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

State shall mean the State of New York.

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

Sublessee shall mean Citywide Mobile Response Corp., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns under the Sublease Agreement.

Sub-sublease Agreement shall mean that certain Agreement of Lease, dated as of May 1, 2002, by and between the Sublessee, as landlord, and the Sub-sublessee, as tenant, a copy of which is attached here as Exhibit E.

Sub-sublessee shall mean C.Z. Produce Inc., a corporation organized and existing under the laws of the State of New York.

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

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

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

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

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

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

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

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

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

(iii) the transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or of the Sublessee or any other occupant or

user of the Facility from one area of the State (but outside of the City) to within the City or in the abandonment of one or more facilities or plants of the Lessee or of the Sublessee or of any other occupant or user of the Facility located within the State (but outside of the City);

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

(v) 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

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

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

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

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

(c) There is no action or proceeding pending or, to the best of the Lessee's knowledge, after diligent inquiry, threatened by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations

under this Agreement and each other Project Document to which it is or shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

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

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

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

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

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

(i) Undertaking the Project 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.

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

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

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

(m) The Mortgage Note evidences the obligation of the Lessee to repay the Loan made by the Mortgagee to the Lessee pursuant to the Mortgage for purposes of financing a portion of the cost of the Project.

(n) The Project Cost Budget attached as Exhibit B to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that approximately \$1,000,000 of the aggregate of the costs of the Project will be provided from equity funds on the part of the Lessee and/or the Sublessee.

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

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

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

(r) Neither the Lessee nor any Affiliate thereof is a Prohibited Person.

(s) The rentable square footage of the Improvements constituting part of the Facility is approximately 19,500 rentable square feet.

(t) The aggregate square footage of the Project land is approximately 58,000 square feet.

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

(v) The Project will be completed by May 1, 2003.

(w) No Person other than the Lessee or the Sublessee is in occupancy or possession of any portion of the Facility.

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 intended to be incorporated or installed in the Facility Realty as part of the Project and good and merchantable title to all items of Facility Equipment intended to be acquired for use and operation at the Facility Realty, also as part of the Project, shall in each case vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest title to such Improvements and items of 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 renovating the Improvements thereon or therein, (ii) acquiring the Facility Equipment, (iii) 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, (iv) paying all fees, costs and expenses incurred in the acquisition and renovation of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and the Loans, and (v) 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 represents, warrants, covenants and agrees that it will complete the Project, or cause the Project to be completed by May 1, 2003, in a first class workerlike manner, free of defects in materials and workmanship (including latent defects); **provided, however,** the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld, delayed or conditioned). In undertaking the Project, the Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) the Loan and (ii) equity furnished by the Lessee and/or the Sublessee to the extent such funds shall be necessary to cover costs of the Project 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) Within thirty (30) days from the date of completion of the Project, the Lessee shall evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Schedule A attached hereto, together with all attachments required thereunder.

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

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

Section 2.3 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 each of the Land and the Improvements against

loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of each of the Land and the Improvements certified to the Lessee, the title company issuing such title insurance policy and the Agency. Any proceeds of such 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 of its authorized purposes.

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

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by CMR Properties, LLC, a New York limited liability company (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation and equipping by the Agency of a commercial facility in Bronx, New York, consisting of the acquisition of a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto, and the acquisition and installation of machinery and equipment in connection therewith, all for use by Citywide Mobile Response Corp., a New York corporation, in the provision of ambulance and ambulette services to hospitals, nursing homes and senior care facilities, to be located at 1624 Stillwell Avenue, Bronx, New York (the "Project"). The building materials and fixtures (excluding trade fixtures), capital improvements, equipment and other personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract,

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

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

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

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) May 1, 2003, (3) the completion of the Project as provided in Section 2.2 hereof, or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

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

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

(A) shall not be available for payment of any costs, other than the costs of the Exempt Property,

(B) shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for use only by the Lessee and the Sublessee at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Lessee or the Sublessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee and by the Sublessee at the Facility,

(C) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(D) shall not be available for or with respect to any item of rolling stock or water craft, or tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee for incorporation within the Facility,

(E) shall not be available for any tangible movable personal property, rolling stock or trade fixtures for use by any Person other than the Lessee or the Sublessee at the Facility,

(F) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Tax absent the involvement by the Agency,

(G) shall not be available for any cost of utilities, cleaning service or supplies,

(H) shall not be available subsequent to the termination of this Agreement, and

(I) shall only be available for those costs set forth in Exhibit A to the Sales Tax Letter.

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

to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) Upon request by the Agency of, and reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs for which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

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

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

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

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

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

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

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on midnight (New York City time), July 1, 2028, or such earlier date as this Agreement may be terminated as hereinafter provided.

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

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

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

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

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

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

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

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

ARTICLE IV**MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES
AND INSURANCE**

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Sublessee at the Facility shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be 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 materially impaired,

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

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

(iv) if the cost of such additions or alterations are estimated to exceed \$250,000, unless the Lessee can demonstrate to the reasonable satisfaction of the Agency that the Lessee has available funds sufficient to pay the cost thereof, 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 Realty, machinery, equipment and other personal property not constituting part of the Facility Equipment at the Lessee's own cost and expense (the "**Lessee 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.

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

Section 4.2 Removal of Property of the Facility. (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (the "**Existing Facility Property**") and thereby acquiring such Existing Facility Property, **provided, however,** such Existing Facility Property is substituted or replaced by property (u) having equal or greater fair market value, operating efficiency and utility and (v) being free of all mortgages, liens,

charges, encumbrances, claims and security interests other than Permitted Encumbrances, and no such removal shall be effected if (w) such removal is to another location of the Lessee or the Sublessee or any Affiliate other than the Facility, (x) such removal would change the nature of the Facility as an Approved Facility and a "project" within the meaning of the Act, (y) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (z) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency title to any property installed or placed upon the Facility Realty 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 within thirty (30) days after receipt of such written request of the Lessee, 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) Other than as set forth in Section 4.2(a) above, the Lessee shall not, without the prior written consent of the Agency and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Facility Equipment or change the location of the Facility Equipment or any part thereof from the Facility Realty.

(d) 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.

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

Section 4.3 Payment in Lieu of Real Estate Taxes.**(a) *Description and Address of Project:***

The Project consists of the acquisition, renovation and equipping by the Agency of a commercial facility in Bronx, New York, consisting of the acquisition of a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto and the acquisition and installation of machinery and equipment in connection therewith, all for use in the provision of ambulance and ambulette services to hospitals, nursing homes and senior care facilities. The Facility is located at 1624 Stillwell Avenue, Bronx, New York, being Section 15, Block 4223 and Lot 12.

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

The PILOT Commencement Date shall be July 1, 2003. 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 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 Bank of New York, as PILOT Depository (or to such other Person as the Agency shall direct the Lessee in writing), in installments aggregating the full amounts due at least seven (7) Business Days before such times as real estate taxes are due the City 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, 2028 (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 hereof, make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) only to the extent that Full Land Taxes in the respective tax fiscal year of the City shall exceed the following:

<u>YEAR</u>	<u>MAXIMUM LAND TAX ABATEMENT</u>
July 1, 2003 - June 30, 2024	\$93,500
July 1, 2024 - June 30, 2025	\$74,800
July 1, 2025 - June 30, 2026	\$56,100
July 1, 2026 - June 30, 2027	\$37,400
July 1, 2027 - June 30, 2028	\$18,700

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

For the period commencing on the PILOT Expiration Date until the date on which the Agency no longer owns the Facility, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land constituting part of the Facility.

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) from the PILOT Commencement Date through June 30, 2024, 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:

<u>YEAR</u>	<u>LESSEE PAYS:</u>
July 1, 2024 - June 30, 2025	STRET + [(CRET less STRET) x 0.2]
July 1, 2025 - June 30, 2026	STRET + [(CRET less STRET) x 0.4]
July 1, 2026 - June 30, 2027	STRET + [(CRET less STRET) x 0.6]
July 1, 2027 - June 30, 2028	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, 2028, 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 if the Facility Realty were owned by the Lessee rather than the Agency.

STRET or "Stabilized Real Estate Taxes" shall mean the assessed value of the Improvements as of May 25, 2001 multiplied by the City's tax rate as of July 1, 2001.

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 the 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.

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) 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 percent (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 or the 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 and occupied or is intended to be utilized or occupied by Persons other than the Lessee or the Sublessee, except as stated Section 1.5(p) hereof. 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 or the 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 the Sub-sublessee or by other Persons other than the Lessee or the Sublessee for so long as such utilization or occupation shall continue. The Lessee further agrees to furnish the Agency with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth all Persons other than the Lessee or the Sublessee, if any, that shall be utilizing or

occupying any portion of the Facility Realty, the amount of space so occupied or utilized and the percentage of the available square footage of the Facility Realty represented by such occupation or utilization.

Commencing as of the date on which the Facility Realty 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 forward, as soon as practicable, to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's ownership of the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility Realty if the Lessee were the owner of record of the Facility Realty.

Section 4.5 Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee and the

Sublessee. In addition to this general requirement, such insurance shall, for purposes of subsection (b) through (g) of this Section 4.5, include without limitation insurance coverages described in paragraphs (i) through (vi) below (hereinafter "Specific Coverage"):

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

(ii) (A) Property damage insurance and (B) during any period of construction, reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by property damage insurance), Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy", and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, equipment, furniture, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee, the Sublessee or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to 100% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer selected by the Lessee, not less often than once every three years, at the expense of the Lessee, any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks;

(iii) General Liability insurance (including contractual liability coverage together with any Umbrella Liability insurance) naming the Lessee and the Sublessee as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate or, if the Facility is covered by a multi-site policy, such multiple of that minimum through excess coverage as is satisfactory to the Agency, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance that the Lessee, the Sublessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to

the Facility; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law;

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

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

(b) All Specific Coverage 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 and having an A.M. Best rating of "A-/X" or better

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

(i) designate (except in the case of workers' compensation insurance) the Lessee, the Sublessee, and the Agency as additional insureds as their respective interests may appear;

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

(iii) provide that in respect of the respective interests 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, or ten (10) days if due to nonpayment of premium, after receipt by the Agency, respectively, of written notice by such insurers of such cancellation, lapse, expiration or change;

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

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

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

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

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

(g) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgage with respect to insurance or the application of the proceeds thereof and said Mortgage 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, three (3) Business Days after first notifying the Lessee in writing of any such failure on its part (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any

failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with 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 applicable Legal Requirements, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which 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 proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably 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 or the Agency being in any danger of any civil or any criminal liability other than normal accrual of interest and, in the case of the Lessee only, penalties, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency to protect the security intended to be offered by the Project Documents.

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 where the cost of rebuilding, replacements, repairs or restorations of the Facility will exceed \$250,000, and

(iv) be effected with due diligence in a good and 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 or arrangement for payment, reasonably satisfactory to the Agency, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has 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 of 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 exist no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

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

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

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

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

(i) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgage with respect to insurance or the application of proceeds thereof and condemnation awards, which Mortgage shall control the use of insurance proceeds and condemnation awards. The obligations of the Lessee hereunder shall be independent of any such other obligations relating to insurance.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) 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, (B) is not, nor is it an Affiliate of, a Prohibited Person, and (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer. The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be duly qualified to do business in the State and that any entity succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) not constitute a Prohibited Person.

The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (x) continue to be owned by the same individuals as shall own the voting stock or other equity interest in the Sublessee (however, such individuals may be changed by transfers of the voting stock of the Sublessee to members of the immediate family of Henry Halpert, Robert Bleier or Judith Bleier or to trusts for bona fide good faith estate and gift tax planning purposes), (y) continue to be duly qualified to do business in the State and that any entity succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) 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, and the PILOT Depository (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability of every kind and nature and however caused, arising during the period commencing from April 16, 2002, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), other than, with respect to any Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with

(i) the financing of the costs of the Facility,

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof (whether to the Sub-sublessee or otherwise),

(iv) the execution and delivery by an Indemnified Party, the Lessee or any other Person of, or performance by an Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any injury to any Person or the personal property of any Person in or on the premises of, the Facility,

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

(vii) any damage or injury to the person or property of (A) the Lessee or the Sublessee, (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee or the Sublessee, or (C) any other Person who may be in or about the premises of the Facility,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as defined in Section 6.2(d) below) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

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

Such indemnification set forth above shall be binding upon the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement. Notwithstanding the foregoing, the Lessee's indemnification and defense requirements set forth in Section 6.2(a) above with respect to the Agency shall not apply to any Claims for losses, damage, injury or liability arising from the gross negligence or willful misconduct of the Agency with respect to actions or omissions under paragraphs (iii), (iv) and (v) of Section 6.2 (a) above arising upon or about the Facility or the Project.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, any Claims for losses, damage, injury or liability incurred as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (ix) of Section 6.2(a) hereof or at the direction of the Lessee or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c)(i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and (B) except as set forth in a certain Level I Environmental Site Assessment, dated March 26, 2002, prepared by National Association Corporation ("NAC"), as modified by a letter dated April 2, 2002 (collectively, the "Audit"), from NAC to the Sublessee, true and correct copies of which the Lessee has delivered to the Agency, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(iii) The Lessee shall comply with and shall use its best efforts to ensure compliance by all occupants and users of the Facility with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and shall use its best efforts to ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such occupant or user shall be an Affiliate of the Lessee or the Sublessee, the obligations of the Lessee with respect to such Persons shall be absolute and not limited to best efforts.

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

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

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

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

(e) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision. For the purposes of this Section

6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) 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 its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(g) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

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

On the Commencement Date, the Lessee shall pay to the Agency its fee of \$14,500 (said amount representing a \$12,000 financing fee plus the Agency's Project Counsel fee of \$5,000 less an application fee of \$2,500), payment of which has been received on the Commencement Date. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$500 payable upon the Commencement Date and each 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. (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 of 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 of the Sublease Agreement.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from 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 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 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 so proposed to be released and the release of such portion of the Facility 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 the Sublessee or the Sub-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 the Sublessee under this Agreement or under the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written

notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

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

Section 6.6 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the title insurance policy referred to in Section 2.3 hereof), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility Realty 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 THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE 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 THE SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON

FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

(b) Upon request of the Agency, the Lessee shall deliver to the Agency a certificate of an Authorized Representative of the Lessee (i) as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Lessee was in compliance with all the provisions 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 shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto; and (ii) that the insurance the Lessee maintained complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry, 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 it 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, commencing August 1, 2002, until the termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule C attached hereto, certified as to accuracy by the chief financial or accounting officer of the Lessee and the Sublessee. Upon termination of this Agreement, the Lessee and the Sublessee shall submit to the Agency an employment report relating to the period commencing the date of the last report submitted to the Agency and ending on the last payroll date of the preceding month in substantially the form of Schedule C attached hereto, certified as to accuracy by the Lessee and the Sublessee.

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

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

York City Local Law 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 shall be recorded by the Lessee in the appropriate office of the Register of The City of New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

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

Section 6.13 Subtenant Survey. The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2003, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form attached hereto as Schedule D.

Section 6.14 Current Facility Equipment Description. The Lessee covenants and agrees that throughout the term of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of the Appendices to this Agreement to be an accurate and complete description of all current items of Facility Equipment. To this end, the Lessee covenants and agrees (i) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (ii) that no item of Facility Equipment shall be delivered and installed at the Facility as part of the Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in the Appendices attached as part of this Agreement, and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

Section 6.15 Environmental Covenant. Pursuant to the recommendations set forth in the Audit and in compliance with all Legal Requirements, the Lessee shall remove all solid waste

and properly dispose of same away from the Facility. The Lessee shall deliver to the Agency proof acceptable to the Agency of the foregoing within six (6) months of the date of the execution and delivery of this Agreement together with any further documentation as may be requested by the Agency to evidence compliance with the foregoing.

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 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 6.14, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

(d) The Lessee or the 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 or the 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 or the 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 undismitted, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Lessee or the 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, Section 7 of the Sublease Agreement or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made by the Lessee, the Sublessee or any Guarantor (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) herein or in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall 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 the Mortgage or of any mortgage lien on or security interest in the Facility;

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

(i) An "Event of Default" under the Sublease Agreement, the Guaranty Agreement, any mortgage, including the Mortgage, with respect to the Facility, or the Mortgage Note shall occur and be continuing;

(j) The Lessee, the 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, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

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

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

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

powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

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

ARTICLE VIII**OPTIONS TO 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 its 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, 8.5, 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 PILOT Expiration Date, and upon receipt of sixty (60) days prior written notice of the Agency requesting termination, the Lessee 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 a deed and bill of sale 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, 8.5, and 9.13 hereof. In the event the Lessee does not accept title to the Facility and terminate this Agreement within such 60 day period, then, commencing on the 61st day after transmittal of the notice requesting termination as above provided, the Lessee shall, in addition to all other payment obligations due to the Agency hereunder, make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have 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 May 1, 2003 (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 percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first (6) years after the Operations Commencement Date;

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

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

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

(E) twenty percent (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 the Sublessee shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Lessee or the Sublessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, within or outside of the City);

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

(4) The Lessee or the 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 the 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 the 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.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years after the Operations Commencement Date, which notification shall set forth the terms of such Recapture Event.

(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 Mortgage, the Agency and the Lessee will grant to the Mortgagee a first mortgage lien on and a security interest in the Facility as security for the payment of amounts due under the Mortgage Note. This Agreement shall be subject and subordinate to the Mortgage and to such mortgage lien and security interest so created thereby; provided, however, that nothing in the Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Lessee.

Section 9.3 Assignment or Sublease. (a) The Lessee shall not at any time (y) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except pursuant to the Sublease Agreement and the Sub-sublease Agreement, without the prior written consent of the Agency (such consent to take into consideration

the Agency's policies as in effect from time to time), and provided that, if the Agency shall deliver such consent:

(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, and 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 shall contain such other provisions as the Agency may reasonably require.

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

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

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

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

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

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

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

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

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

(b) if to the Lessee, to CMR Properties, LLC, c/o Citywide Mobile Response Corp., 2460 Rowe Street, Bronx, New York 10461, Attention: Henry Halpert, with a copy to CMR

Properties, LLC, c/o Citywide Mobile Response Corp., 1624 Stillwell Avenue, Bronx, New York 10461, Attention: Henry Halpert and with a further copy to David Stadtmauer, Esq., Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022.

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 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:

To the Mortgagee, to Fleet National Bank, 1133 Avenue of the Americas, New York, New York 10036, Attention: Andrew Bregenzler, Vice President, with a copy to, Rick, Steiner, Segal Fell & Benowitz, P.C., Three New York Plaza, New York, New York 10004, Attention: Jacob Steiner, 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 re-possession shall survive the termination or expiration of this Agreement.

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

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

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


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

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

Section 9.16 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on May 22, 2002.


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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Carolyn A. Edwards
Deputy Executive Director

CMR PROPERTIES, LLC

By: 


Henry Halpert
Member

STATE OF NEW YORK)

:ss.:

COUNTY OF NEW YORK)

On the 21st day of May, 2002, the undersigned, a Notary Public/~~Commissioner of Deeds~~ in and for said State/~~The City~~ of New York, 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 executed the instrument.




Notary Public/~~Commissioner of Deeds~~

NOTARY PUBLIC
STATE OF NEW YORK
2005

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

On the 22nd day of May, 2002, the undersigned, a Notary Public in and for said State, personally appeared Henry Halpert, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ capacity, and that by his/~~her~~ signature on the instrument, the individual executed the instrument.



Notary Public

CAROLYN YI
Notary Public, State Of New York
No. 01Y16013752
Qualified In Queens County
Commission Expires Sept. 28, 2002

APPENDICES

Exhibit A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Bronx, City and State of New York, being known and designated as Lots Numbered 45 and 54 inclusive, and Lots Numbered 59 and 67 inclusive, on a certain map entitled "Map of 67 Lots, being the property of Lester Gross Company located on Bronx and Pelham Parkway, Rhinelander Avenue and Stillwell Avenue, Borough of Bronx, City of New York, made by George C. Hollerith, C.E. & C.S., October 22, 1923", and filed in the Office of the Register of Bronx County on March 13, 1926 as Map No. 777. It being intended to cover all of Tax Lot 62, all of Tax 12 and so much of Tax Lot 8 as is included in the prolongation of the westerly side of Tax Lot 12, southerly to the northerly side of Bassett Avenue in Block 4223, Section 15 on the Tax Map of the Borough and County of Bronx and more specifically described as follows:

BEGINNING at a point on the southerly side of Stillwell Avenue, distant 225.30 feet westerly from the corner formed by the intersection of the southerly side of Stillwell Avenue and the southwesterly side of Pelham Parkway South;

RUNNING THENCE southerly, at right angles to Stillwell Avenue, 100 feet;

THENCE easterly, at right angles to the last mentioned course, 101.69 feet;

THENCE southerly, along a line forming an angle of 89 degrees 28 minutes 35 seconds on its westerly side with the last mentioned course, 93.96 feet to the northerly side of Bassett Avenue;

THENCE along the northerly side of Bassett Avenue, on a curve to the left having a radius of 2150 feet and a central angle of 09 degrees 21 minutes 45.9 seconds, a distance of 351.33 feet;

THENCE northerly, 194 feet 6 inches to the point on the southerly side of Stillwell Avenue distant 250.24 feet westerly from the point of beginning, as measured along the southerly side of Stillwell Avenue, as it winds and turns;

THENCE along the southerly side of Stillwell, on a curve to the right having a radius of 2193.08 feet and a central angle of 04 degrees 58 minutes 12.5 seconds, a distance of 190.24 feet to a point of tangency;

THENCE still along the southerly side of Stillwell Avenue, 60 feet to the point or place of **BEGINNING**.

Exhibit B

DESCRIPTION OF THE FACILITY EQUIPMENT

Telephone System
Computer System
Other Office Equipment
Maintenance Shop Equipment

Exhibit C

PROJECT COST BUDGET

Use of Funds

Acquisition of Facility	\$1,500,000
Interior Demolition and Renovations	550,000
Office Equipment*	100,000
Maintenance Shop Equipment	<u>50,000</u>
Total Project Cost:	\$2,200,000

Sources of Funds

Fleet Bank	\$1,200,000
Equity Contribution	<u>1,000,000</u>
Total Source of Funds:	\$2,200,000

* Telephone system, Computer System and other office equipment.

Exhibit D

[FORM OF SALES TAX LETTER]

May __, 2002

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2002 Citywide Mobile Response Corp. Project)

Ladies and Gentlemen:

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

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

2. Pursuant to a resolution adopted by the Agency on April 16, 2002, and a certain Lease Agreement, dated as of May 1, 2002 (the "Lease Agreement"), between the Agency and CMR Properties, LLC, a New York limited liability company (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition of a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto, and the acquisition and installation of machinery and equipment in connection therewith, all for use in the provision of ambulance and ambulette services to hospitals, nursing homes and senior care facilities, to be located at 1624 Stillwell Avenue, Bronx, New York (the "Project") for use and occupancy by the Company and its permitted sublessee, Citywide Mobile Response Corp., a New York corporation (the "Sublessee").

3. In connection with such resolution, the Lease Agreement and this Sales Tax Letter and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, renovation and equipping of the Project and authorizes the Company to use this Sales Tax Letter as its agent only for the payment of the costs of building materials and building fixtures (excluding trade fixtures) for such acquisition and renovation of the Project.

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by CMR Properties, LLC, a New York limited liability company (the "Agent"), as agent for and on behalf of the New York

City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation and equipping by the Agency of a commercial facility in Bronx, New York, consisting of the acquisition of a parcel of land and an approximately 19,500 square foot building thereon, the making of renovations thereto, and the acquisition and installation of machinery and equipment in connection therewith, all for use by Citywide Mobile Response Corp., a New York corporation, in the provision of ambulance and ambulette services to hospitals, nursing homes and senior care facilities, to be located at 1624 Stillwell Avenue, Bronx, New York (the "Project"). The building materials and fixtures (excluding trade fixtures), capital improvements, equipment and other personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

5. The acquisition of building materials, building fixtures, machinery and equipment constituting a part of the Project shall be exempt from the sales and use tax levied by the State of New York and The City of New York on the condition that (i) such building materials, fixtures and equipment are separately identifiable property of the Agency, and (ii) any such property shall have a useful life of one year or more, and shall solely be for the use of the Company and the Sublessee at the Facility, and for no other entity and at no other location, and be effected by and at the sole cost of the Company.

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

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

8. Accordingly, until the earlier of (i) May 1, 2003, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Sales Tax Letter (in each case as so terminated, the "Termination Date"), all vendors, contractors and subcontractors are hereby authorized to rely on this Sales Tax Letter (or on a photocopy or fax of this Sales Tax Letter) as evidence that purchases of the Project property, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

9. The Company agrees and covenants that upon the occurrence of the Termination Date, it will immediately deliver this Sales Tax Letter back to the Agency for cancellation.

10. The Agency hereby further appoints the Sublessee as its agent for the purpose of using the Facility.

The signatures of the respective representatives of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee have accepted the terms hereof.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Carolyn A. Edwards
Deputy Executive Director

ACCEPTED AND AGREED TO BY:

CMR PROPERTIES, LLC

By: _____
Name:
Title:

CITYWIDE MOBILE RESPONSE CORP.

By: _____
Name:
Title:

EXHIBIT A

Exemptions from sales or use tax relating to the acquisition of building materials and building fixtures for incorporation within the Facility Realty, together with the following items of equipment:

Telephone System

Computer System

Other Office Equipment

Maintenance Shop Equipment

Exhibit D

ST-340 Annual Report of Sales and Use Tax Exemptions



Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

For Period Ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator		Federal employer identification number (EIN)	
Street address		Telephone number	
City	State	ZIP code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number	
City	State	ZIP code	
Name of IDA			
Street address			
City	State	ZIP code	
Name of project			
Street address of project site			
City	State	ZIP code	

1 Project purpose:

Services Construction Agriculture, forestry, fishing

Wholesale trade Retail trade Finance, insurance or real estate

Transportation, communication, electric, gas, or sanitary services

Manufacturing Other (specify) _____

2 Date project began: _____
MM DD YY

3 Beginning date of construction or installation (actual or expected): _____
MM DD YY

4 Completion date of construction phase of project (actual or expected): _____
MM DD YY

5 Completion date of project (actual or expected): _____
MM DD YY

6 Duration of project (years/months; actual or expected): _____
Years Months

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases)		7	\$
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator		Title of person signing	
Signature		Date	

Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator.
Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, BLDG 8 RM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227.

Instructions

General information

Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) are not required to file Form ST-340.

What must be reported?

The report must show the total value of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator, and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the total combined exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.



Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Internet access: <http://www.tax.state.ny.us>

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence, W A Harriman Campus, Albany NY 12227.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator

Enter the name, address, federal employer identification number (EIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title, and telephone number of the individual (e.g. attorney or accountant) authorized by the IDA agent/project operator to submit this report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line instructions

Line 1 — Project purpose — Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

Line 2 — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Line 3 — Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or installation on the project. If the project does not involve any construction, enter *Does not apply*.

Line 4 — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

Line 5 — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

Line 6 — Enter the total number of years and months from the project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: NYS Tax Department, IDA Unit, Bldg. 8 Rm 658, W A Harriman Campus, Albany NY 12227.

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

Exhibit E

Copy of Sub-sublease Agreement

permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organizations and other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. If by reason of failure to comply with the foregoing fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" or rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's judgment, to absorb and prevent vibration, noise and annoyance.

Subordination: 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument or subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may require.

Tenant's Liability Insurance Property Loss, Damage, Indemnity:

8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees; Owner

or its agents shall not be liable for any damage caused by other tenants or persons in, upon or about said building or caused by operations in connection of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorney's fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant, and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty:

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereon shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thereupon shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent

Rider to be added if necessary.

made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and Tenant each hereby release and waives all right of recovery with respect to subparagraphs (b), (c) and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises insofar to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and or furnishings or any fixtures or equipment, improvements, or appliances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain:

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from its date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

Assignment, Mortgage, Etc.:

11. Tenant, for itself, its heirs, devisees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant or the majority partnership interest of a partnership Tenant shall be deemed an assignment. If this lease is assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current:

12. Rates and conditions in respect to metering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damage or expenses which Tenant may sustain.

Access to Premises:

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform in the premises after Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided, whenever possible, they are within walls or otherwise concealed. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon

the demised premises the usual notices "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligation hereunder.

Vault, Vault Space, Area: 14. No Vault, vault space or area, whether or not enclosed or covered, not within the property line of the building leased hereunder anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault spaces and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant, if used by Tenant, whether or not specifically leased hereunder.

Occupancy: 15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the notice annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant shall be responsible for and shall procure and maintain such license or permit.

Bankruptcy: 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be called by Owner by sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rental reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be relet by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default: 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises becomes vacant or deserted "or if this lease be rejected under §253 of Title 11 of the U.S. Code (bankruptcy code)," or if any execution or attachment shall be issued against Tenant or any of Tenant's property whatsoever the demised premises shall be taken or occupied by someone other than Tenant; or if Tenant shall make default with respect to any other lease between Owner and Tenant; or if Tenant shall have failed, after five (5) days written notice, to redempt with Owner any portion of the security deposited hereunder which Owner has applied to the payment of any rent and additional residue and payable hereunder or failed to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which fact Owner shall be the sole judge; then in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced during such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written five (5) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said five

(5) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispose of the same by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption:

18. In case of any such default, re-entry, expiration and/or disposals by summary proceedings or other wise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, disposals and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and so covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-letting may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

Fees and Expenses:

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any action or proceedings, and prevails in any such action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

Building Alterations and Management:

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant thereby to change the arrangement and or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building and to change the same, number or designation by which the building may be known. There shall be no abatement to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenant making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of any controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations by Owner

31. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation or any other matter of thing affecting or related to the demised premises or the building except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" on the date possession is tendered and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any contrary agreement heretofore made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such contrary agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Terms:

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all his property from the demised premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyments:

23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peacefully and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 34 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession:

24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or if Owner has not completed any work required to be performed by Owner, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete any work required) until after Owner shall have given Tenant notice that Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in paragraphs one of this lease. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver:

25. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any enforcement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. All checks tendered to Owner as and for the rent of the demised premises shall be deemed payments for the account of Tenant. Acceptance by Owner of rent from anyone other than Tenant shall not be deemed to operate as an attornment to Owner by the payor of such rent or as a consent by Owner to an assignment or subletting by Tenant of the demised premises to such payor, or as a modification of the provisions of this lease. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury:

26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action,

proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4 except for statutory mandatory counterclaims.

Liability to Perform:

27. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from doing so by reason of strikes or labor troubles or any cause whatsoever beyond Owner's sole control including, but not limited to, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions which have been or are affected, either directly or indirectly, by war or other emergency.

Bills and Notices:

28. Except as otherwise in this lease provided, a bill statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or received if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Water Charges:

29. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant certifies Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation, thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense in default of which Owner may cause such meter and equipment to be replaced or repaired and collect the cost thereof from Tenant, as additional rent. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent. Tenant covenants and agrees to pay, as additional rent, the sewer rent, charge of any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. If the building on the demised premises or any part thereof is supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner, as additional rent, on the first day of each month,

~~_____~~) of the total meter charges as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

Sprinklers:

30. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the federal, state or city government recommend or require the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ 0 _____ on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

Elevators, Heat, Cleaning:

31. As long as Tenant is not in default under any the covenants of this lease beyond the applicable grace period provided in this lease for the curing of such default, Owner shall: (a) provide necessary passenger elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m.; (b) if freight elevator service is provided, same shall be provided only on regular business days Monday through Friday inclusive, and on those days only between the hours of 9 a.m. and 12 noon and between 1 p.m. and 3 p.m.; (c) furnish heat, water and other services supplied by Owner to the demised premises, when and as required by law, on business days from 8 a.m. to 6 p.m. and on Saturdays from 8

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a.m. to 1 p.m.; (f) clean the public halls and public portions of the building which are used in common by all tenants. Tenant shall, at Tenant's expense, keep the demised premises, including the windows, clean and in order, to the reasonable satisfaction of Owner, and for that purpose shall employ the person or persons, or corporation approved by Owner. Tenant shall pay to Owner the cost of removal of any of Tenant's refuse and rubbish from the building. Bills for the same shall be rendered by Owner to Tenant at such time as Owner may elect and shall be due and payable hereunder, and the amount of such bills shall be deemed to be, and be paid as, additional rent. Tenant shall, however, have the option of independently contracting for the removal of such rubbish and refuse in the event that Tenant does not wish to have same done by employees of Owner. Under such circumstances, however, the removal of such refuse and rubbish by others shall be subject to such rules and regulations as, in the judgment of Owner, are necessary for the proper operation of the building. Owner reserves the right to stop service of the heating, elevator, plumbing and electric systems, when necessary, by reason of an accident, or emergency, or for repairs, alterations, replacements or improvements, in the judgment of Owner desirable or necessary to be made, until said repairs, alterations, replacements or improvements shall have been completed. If the building of which the demised premises are a part supplies manually operated elevator service, Owner may proceed diligently with alterations necessary to substitute automatic control elevator service without in any way affecting the obligations of Tenant hereunder.

Security: 33. Tenant has deposited with Owner the sum of \$ 10,042.50 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the renting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security, and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Captions: 33. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

Definitions: 34. The term "Owner" as used in this lease means only the owner of the fee or of the leasehold of the building, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sale of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said leases of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-entr" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "rent" includes the annual rental rate whether so expressed or expressed in monthly installments, and "additional rent" means all sums which shall be due to Owner from Tenant under this lease, in addition to the annual

rental rate. The term "business days" as used in this lease, shall exclude Saturdays, Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation-Shoring: 35. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.


Rules and Regulations: 36. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe fully, and comply strictly with, the Rules and Regulations annexed hereto and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within fifteen (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Glass: 37. Owner shall replace, at the expense of the Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the demised premises. Owner may insure, and keep insured, at Tenant's expense, all plate and other glass in the demised premises for and in the name of Owner. Bills for the premiums therefor shall be rendered by Owner to Tenant at such times as Owner may elect, and shall be due from, and payable by, Tenant when rendered, and the amount thereof shall be deemed to be, and be paid, as additional rent.

Entirety Certificate: 38. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Directory Board Listing: 39. If, at the request of and as accommodation to Tenant, Owner shall place upon the directory board in the lobby of the building, one or more names of persons other than Tenant, such directory board listing shall not be construed as the consent by Owner to an assignment or subletting by Tenant to such person or persons.

Successors and Assigns: 40. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgement (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

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In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner:

CITY WIDE MOBILE RESPONSE CORP.



By: 

[L.S.]

C. Z. PRODUCE INC.



By: 

[L.S.]

Witness for Tenant

ACKNOWLEDGEMENTS

CORPORATE TENANT
STATE OF NEW YORK, ss.:
County of

INDIVIDUAL TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came to me known, who being by me duly sworn, did depose and say that he resides in that he is the of the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

On this day of , 19 , before me personally came to be known and known to me to be the individual described in and who, as TENANT, executed the foregoing instrument and acknowledged to me that he executed the same.

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND MADE A PART OF THIS LEASE IN ACCORDANCE WITH ARTICLE 36.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sidguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors of halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and or vibrations, or interfere in any way, with other Tenants or those having business therein, nor shall any bicycles, vehicles, animals, fish, or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablets shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring,

cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease of which these Rules and Regulations are a part.

9. No Tenant shall obtain for use upon the demised premises ice, drinking water, towel and other similar services, or except barbering or bootblackening services in the demised premises, except from persons authorized by Owner, and at hours and under regulations fixed by Owner. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons. Notwithstanding the foregoing, Owner shall not be required to allow Tenant or any person to enter or remain in the building, except on business days from 8:00 a.m. to 6:00 p.m. and on Saturdays from 8:00 a.m. to 1:00 p.m. Tenant shall not have a claim against Owner by reason of Owner excluding from the building any person who does not present such pass.

11. Owner shall have the right to prohibit any advertising by any Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a loft building, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. Tenant shall not use the demised premises in a manner which disturbs or interferes with other Tenants in the beneficial use of their premises.

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Dated
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Entered by
Approved by

**RIDER TO LOFT LEASE BETWEEN CITY WIDE MOBILE RESPONSE CORP.,
AS OWNER,
AND C.Z. PRODUCE, INC., AS TENANT,
DATED AS OF MAY 15, 2002**

If and to the extent that any of the provisions of this rider conflict or are otherwise inconsistent with any of the printed provisions of this lease, whether or not such inconsistency is expressly noted in this rider, the provisions of this rider shall prevail.

41 Term and Fixed Rent.

(a) For purposes of this Lease, the term "Lease Year" shall mean the twelve (12) month period commencing on the first day of the calendar month during which the Commencement Date (as defined below) shall fall. The term of this Lease shall be five (5) Lease Years, commencing on the Commencement Date (as defined in the following sentence) and expiring on the last day of the month during which the fifth (5th) anniversary of the Commencement Date shall fall (collectively, the "Term"). For purposes of this Lease, the term "Commencement Date" shall mean the date Owner shall have delivered vacant possession of the demised premises with Owner's work as set forth in Article 51 of this Rider, having been substantially completed. Fixed Rent shall commence on the Commencement Date. Fixed Rent shall be prorated for the number of calendar days remaining in the calendar month during which the Commencement Date shall fall.

(b) Tenant shall pay Fixed Rent (sometimes hereinafter referred to as "fixed annual rent") during the Term at the following rates for the indicated periods:

(i) For the first (1st) Lease Year, at the rate of Forty Thousand One Hundred Seventy and 00/100 (\$40,170.00) Dollars per annum (\$3,347.50 per month);

(ii) For the second (2nd) Lease Year, at the rate of Forty One Thousand Three Hundred Seventy Five and 16/100 (\$41,375.16) Dollars per annum (\$3,447.93 per month);

(iii) For the third (3rd) Lease Year, at the rate of Forty Two Thousand Six Hundred Sixteen and 32/100 (\$42,616.32) Dollars per annum (\$3,551.36 per month);

(iv) For the fourth (4th) Lease Year, at the rate of Forty Three Thousand Eight Hundred Ninety Four and 80/100 (\$43,894.80) Dollars per annum (\$3,657.90 per month); and

(v) For the fifth (5th) Lease Year, at the rate of Forty Five Thousand Two Hundred Eleven and 68/100 (\$45,211.68) Dollars per annum (\$3,767.64 per month);

(c) Upon the execution of this Lease, Tenant shall pay (i) the sum of \$2,000.00, constituting the first monthly installment of Existing Premises Base Rent payable for the Existing Premises which amounts shall be applied against base rent as the same is immediately due and payable and (ii) the sum of \$10,042.50 constituting the security deposit due and owing pursuant to Article 32 of the Lease for the demised premises.

(d) Notwithstanding anything to the contrary contained herein, Tenant shall not be liable for the payment of Fixed Rent for the first thirty (30) days of the Term; it being understood that for the period during which Tenant shall not be liable for the payment of Fixed Rent, Tenant shall be responsible for all items of additional rent (i.e. all other payments due to Owner under this Lease other than Fixed Rent) and for the cost of its utilities which may accrue during said periods. It is also understood and agreed to by Tenant that this free rent period shall not apply to the Existing Premises Base Rent.

42. Rental Payments

(a) All payments other than Fixed Rent to be made by Tenant pursuant to this lease shall be deemed additional rent and, in the event of any non-payment thereof, Owner shall have all of the rights and remedies provided herein or by law for non-payment of rent.

(b) All payments of Fixed Rent and additional rent to be made by Tenant pursuant to this Lease shall be made by checks drawn upon a New York City bank which is a member of the New York Clearing House Association or any successor thereto.

(c) If Owner receives from Tenant any payment less than the sum of the Fixed Rent and additional rent then due and owing pursuant to this Lease, Tenant hereby waives its right, if any, to designate the items to which such payment shall be applied and agrees that Owner in its sole discretion may apply such payment in whole or in part to any Fixed Rent, any additional rent or to any combination thereof then due and payable hereunder.

(d) Unless Owner shall otherwise expressly agree in writing, acceptance of Fixed Rent or additional rent from anyone other than Tenant shall not relieve Tenant of any of its obligations under this Lease, including the obligation to pay Fixed Rent and additional rent, and Owner shall have the right at any time, upon notice to Tenant, to require Tenant to pay the Fixed Rent and additional rent payable hereunder directly to Owner. Furthermore, such acceptance of Fixed Rent and additional rent shall not be deemed to constitute Owner's consent to an assignment of this Lease or a subletting or other occupancy of the demised premises by anyone other than Tenant, nor a waiver of any of Owner's rights or Tenant's obligations under this lease.

(e) If Tenant shall fail to pay when due any installment of Fixed Rent or any payment of additional rent for a period of five (5) days after such installment or payment shall have become due, Tenant shall pay a late fee of five cents (\$.05) per dollar of the amount of such late installment or payment and such late fee shall be deemed additional rent. The provisions of this paragraph (e) are in addition to all other remedies available to Owner for nonpayment of Fixed Rent or additional rent.

(f) Owner's failure to bill on a timely basis all or any portion of any amount payable pursuant to this Lease for any period during the Term shall neither constitute a waiver of Owner's right to collect ultimately such amount or to bill Tenant at any subsequent time retroactively for the entire amount so unbilled, which previously unbilled amount shall be paid within ten (10) days after being so billed.

43. Real Estate Tax Escalation

Tenant shall pay to Owner, as additional rent, tax escalation in accordance with this Article, as hereinbelow provided.

(a) Definitions: For the purposes of this Article 43, the following definitions shall apply:

(i) The term "base tax year" as hereinafter set forth for the determination of real estate tax escalation shall mean the real estate tax year, 2001-2002.

(ii) The term "the Tax Percentage" for purposes of computing real estate tax escalation shall mean twenty and sixty one hundredths percent (20.6%).

(iii) The term "the building project" shall mean the aggregate combined parcel of land on a portion of which are the improvements of which the demised premises form a part, with all the improvements thereon, said improvements being a part of the block and lot for real estate tax purposes which are applicable to the aforesaid land.

(iv) The term "comparative year" shall mean the twelve (12) months of the real estate tax fiscal year of the City of New York which is currently measured from July 1 through June 30, commencing on July 1, 2002, and each subsequent period of twelve (12) months (or such other period of twelve (12) months) occurring during the term of this lease as hereafter may be duly adopted as the fiscal year for real estate tax purposes by the City of New York.

(v) The term "real estate taxes" shall mean the total of all taxes and special or other assessments levied, assessed or imposed at any time by any governmental authority upon or against the building project, including without limitation, any and all reductions or increases due to the so called New York City ICIP (industrial

commercial incentive program), and also any tax or assessment levied, assessed or imposed at any time by any governmental authority in connection with the receipt of income or rents from said building project to the extent that same shall be in lieu of all or a portion of any of the aforesaid taxes or assessments, or additions or increases thereof, upon or against said building project, excluding any inheritance tax, franchise tax, gift tax and transfer tax. If, due to a future change in the method of taxation or in the taxing authority, or for any other reason, a franchise, income, transit, profit or other tax or governmental imposition, however designated, shall be levied against Owner in substitution in whole or in part for the real estate taxes, or in lieu of additions to or increases of said real estate taxes, then such franchise, income, transit, profit or other tax or governmental imposition shall be deemed to be included within the definition of "real estate taxes" for the purposes hereof. As to special assessments which are payable over a period of time extending beyond the term of this lease, only a pro rata portion thereof, covering the portion of the term of this lease unexpired at the time of the imposition of such assessment, shall be included in "real estate taxes". If, by law, any assessment may be paid in installments, then for the purposes hereof (A) such assessment shall be deemed to have been payable in the maximum number of installments permitted by law, and (B) there shall be included in real estate taxes, for each comparative year in which such installments may be paid, the installments of such assessment so becoming payable during such comparative year, together with interest payable during such comparative year.

(vi) Notwithstanding the foregoing, during the portion of the term of the Lease in which Owner is paying PILOT payments in accordance with the terms of the New York City Industrial Development Agency Straight Lease Program, the "real estate taxes" due for such comparative years shall be calculated by multiplying the assessed value of the building project multiplied by the current tax rate for such comparative years. Tenant acknowledges that the real estate taxes calculated pursuant to this section (vi) shall be the basis for the calculation of Tenant's tax escalation in accordance with section (b) below and such real estate taxes shall be deemed to have been paid by Owner, notwithstanding the fact that Owner actually paid the PILOT payments.

(vii) Where a "transition assessment" is imposed by the City of New York for any tax (fiscal) year, then the phrases "assessed value" and "assessments" shall mean the transition assessment for that tax (fiscal) year.

(viii) The phrase "real estate taxes paid during the base tax year" shall mean the real estate taxes paid during the base tax year.

(b) In the event that the real estate taxes paid for any comparative year shall exceed the amount of the real estate taxes paid during the base tax year, Tenant shall pay to Owner, as additional rent for such comparative year, an amount equal to the Tax Percentage of the excess. Before or after the start of each comparative year, Owner shall furnish to Tenant a statement of the real estate taxes paid for such comparative year, and a statement of the real estate taxes paid during the base tax year (the "Tax Statement"),

together with copies of applicable tax bills. During the period when Owner was paying PILOT payments, the Tax Statement shall the calculation of the real estate taxes for the comparative year (calculated by multiplying the assessed value by the tax rate for the comparative year) and the real estate taxes paid during the base tax year. If the real estate tax paid for such comparative year exceed the real estate taxes paid during the base tax year, additional rent for such comparative year, in an amount equal to the Tax Percentage of the excess, shall be due from Tenant to Owner, and such additional rent shall be paid by Tenant to Owner within fifteen (15) days after receipt of the Tax Statement. The benefit of any discount for any earlier payment or prepayment of real estate taxes shall accrue solely to the benefit of Owner, and such discount shall not be subtracted from the real estate taxes payable for any comparative year.

(c) Should the real estate taxes paid during the base tax year be reduced by final determination of legal proceedings, settlement or otherwise, then, the real estate taxes paid during the base tax year shall be correspondingly revised, the additional rent theretofore paid or payable hereunder for all comparative years shall be recomputed on the basis of such reduction, and Tenant shall pay to Owner as additional rent, within fifteen (15) days after being billed therefor, any deficiency between the amount of such additional rent as theretofore computed and the amount thereof due as the result of such recomputations. Should the real estate taxes payable during the base tax year be increased by such final determination of legal proceedings, settlement or otherwise, then appropriate recomputation and adjustment also shall be made.

(d) If, after Tenant shall have made a payment of additional rent under paragraph (b) above, Owner shall receive a refund of any portion of the real estate taxes payable for any comparative year after the base tax year on which such payment of additional rent have been based, as a result of a reduction of such real estate taxes by final determination of legal proceedings, settlement or otherwise, Owner shall, at Owner's discretion, either (i) within ten (10) days after receiving the refund pay to Tenant the Tax of the refund of real estate taxes allocable to the retail portion of the building less the Tax Percentage of expenses (including reasonable attorneys', appraisers' and other professional fees) allocable to the retail portion of the building incurred by Owner in connection with any such application or proceeding (such net refund being hereinafter referred to as the "Net Refund") or (ii) credit Tenant such Net Refund against the next payment of additional rent on account of real estate taxes due under this lease. If, prior to the payment of real estate taxes for any comparative year, Owner shall have obtained a reduction of that comparative year's assessed valuation of the building project, and therefore of said taxes, then the term "real estate taxes" for that comparative year shall be deemed to include the amount of Owner's expenses in obtaining such reduction in assessed valuation, including reasonable attorneys' and appraisers' and other professional fees.

(e) The Tax Statement to be furnished by Owner as provided above, together with copies of real estate tax bills, shall constitute a final determination as between Owner and Tenant of the real estate taxes for the periods represented thereby.

(f) In no event shall the Fixed Rent under this lease (exclusive of the additional rents under this Article) be reduced by virtue of this Article.

(g) Upon the date of any expiration or termination of this lease (except termination because of Tenant's default) whether the same be the date hereinabove set forth for the expiration of the term or any prior or subsequent date, a proportionate share of said additional rent for the comparative year during which such expiration or termination occurs shall immediately become due and payable by Tenant to Owner, if it was not theretofore already billed and paid. The said proportionate share shall be based upon the length of time that this lease shall have been in existence during such comparative year. Owner shall promptly cause statements of said additional rent for that comparative year to be prepared and furnished to Tenant. Owner and Tenant shall thereupon make appropriate adjustments of amounts then owing.

(h) Owner's and Tenant's obligations to make the adjustments referred to in subsection (g) above shall survive any expiration or termination of this Lease.

(i) Any delay or failure of Owner in billing any tax escalation hereinabove provided shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such tax escalation hereunder within thirty (30) days after delivery of the Tax Statement.

44. Restrictions on Use.

(a) Anything in Article 2 to the contrary notwithstanding, Tenant shall not use or permit all or any part of the demised premises to be used for the: (1) storage for purpose of sale of any alcoholic beverage in the demised premises; (2) sale or display of pornographic publications or material; (3) conduct of a manufacturing printing or electronic data processing business, except that Tenant may operate business office reproducing equipment, electronic data processing equipment and other business machines for Tenant's own requirements (but shall not permit the use of any such equipment by or for the benefit of any party other than Tenant); (4) rendition of any health or related services, or conduct of a school; (5) conduct of the business of an employment agency or executive search firm; (6) conduct of any public auction, gathering, meeting or exhibition; (7) conduct of a stock brokerage office or business; and (8) occupancy of a foreign, United States, state, municipal or other governmental or quasi-governmental body, agency or department or any authority or other entity which is affiliated therewith or controlled thereby.

(b) Tenant shall not use or permit all or any part of the demised premises to be used so as to impair the Building's character or dignity or impose any additional burden upon Owner in its operation.

45. Heat and Air-Conditioning.

(a) Tenant shall be responsible to furnish its own heat, ventilation and air conditioning service ("HVAC System") to the demised premises which HVAC System shall be subject to the reasonable approval of Owner.

(b) Tenant shall, at its sole cost and expense, maintain, repair and replace such HVAC System that services the demised premises.

46. Brokerage.

Owner and Tenant each warrant and represent to the other that there was no broker, finder or similar person entitled to a commission, fee or other compensation, instrumental in consummating this lease based upon, and that no conversations or prior negotiations were had by, or anyone acting on behalf of, the representing party with any broker, finder or similar person concerning the renting of the premises. The representing party agrees to indemnify and hold the other harmless against and from all costs, expenses, damages and liabilities, including reasonable attorneys' fees and court costs, arising from any claims of any conversations, negotiations or actions had by, or anyone acting on behalf of, the representing party with any broker, finder or similar person other than the Broker. The representing party shall defend against any such claim by attorneys satisfactory to the other and shall not enter into any settlement agreement with respect thereto without first receiving written authorization therefor, specific in scope and authority, from the other. It is expressly agreed that Owner shall also have no liability for brokerage commissions arising out of an assignment or a sublease by Tenant, and Tenant shall and hereby does indemnify Owner and hold Owner harmless from and against any and all liability for brokerage commissions arising out of any such assignment or sublease.

47. Notice of Violations.

In the event either party shall be served with a written order, violation or summons from any municipal or governmental agency relating to the conduct of the then business of the Tenant in the demised premises, such party shall notify the other party within seven (7) days by certified mail of the existence of such order, violation or summons and enclose a conformed copy thereof. Each party shall, likewise, give notice to the other of any order, request or requirement given to it by any company insuring the demised premises.

48. Exculpatory Clause.

Notwithstanding anything to the contrary contained herein, Tenant shall look solely to the estate and property of Owner in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial

process) or arbitration award requiring the payment of money by Owner in the event of any default by Owner under this lease, and no other property or assets of Owner or any partner, or member of Owner, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Owner and Tenant hereunder or under law or Tenant's use or occupancy of the premises or any other liability of Owner to Tenant. In the event Owner conveys or transfers its interest in the land and/or building or in this lease, except as collateral security for a loan, upon such conveyance or transfer, Owner (and in the case of any subsequent conveyances or transfer, the then grantor or transferor) shall be entirely released and relieved from all liability with respect to the performance of any terms, covenants and conditions on the part of Owner to be performed hereunder from and after the date of such conveyance or transfer; it being intended hereby that the covenants and obligations on the part of Owner to be performed hereunder shall be binding on Owner, its successors and assigns only during and in respect of their respective periods of direct ownership of an interest in the land and building of which the demised premises form a part or in this lease. This provision shall not be deemed, construed or interpreted to be or constitute an agreement, express or implied, between Owner and Tenant that Owner's interest hereunder and in the land and building of which the premises form a part may become subject to impressment of any equitable lien or otherwise.

49. Submission to Jurisdiction, Etc.

(a) This lease shall be deemed to have been made in New York County, New York, and shall be construed in accordance with the laws of New York. All actions or proceedings relating, directly or indirectly, to this lease shall be litigated only in courts located within the County of New York. Owner and Tenant, any guarantor, as provided for in Article 57 of the performance of their obligations hereunder ("Guarantor") and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the party so served and any successor at the party's address set forth in the instrument of guaranty and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

(b) Whenever any default, request, action or inaction by Tenant causes Owner to incur attorneys' fees and/or any other costs or expenses, Tenant agrees that it shall pay and/or reimburse Owner, as additional rent hereunder, for such fees, costs or expenses within ten (10) days after being billed therefor.

(c) If any monies owing by Tenant under this lease are paid more than fifteen (15) days after the date such monies are payable pursuant to the provisions of this lease, Tenant shall pay Owner interest thereon, at the rate twelve percent (12%) per

annum, for the period from the date such monies were payable to the date such monies are paid.

(d) The submission of this lease to Tenant shall not constitute an offer by Owner to execute and exchange a lease with Tenant and is made subject to Owner's acceptance, execution and delivery thereof.

50. Modifications Requested by Mortgagee.

If any prospective mortgagee of the land, building or any leasehold interest therein requires, as a condition precedent to issuing its loan, the modification of this lease in such manner as does not increase its obligations or materially, adversely lessen Tenant's rights hereunder, Tenant shall not delay or withhold its consent to such modification and shall execute and deliver such confirming documents therefor as such mortgagee requires. Tenant will, upon request of any person succeeding to the interest of the Landlord as a result of such enforcement, automatically become the tenant of said successor in interest, without change in the terms or other provisions of this Lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said Tenant of its obligations under this lease, or (ii) any amendment or modification of this Lease made without the consent of the mortgagee or such successor in interest, such Tenant shall execute and deliver an instrument or instruments confirming such attornment.

51. Condition of the Premises.

(a) Supplementing Article 21, Owner has no obligation whatsoever to perform any work to prepare the demised premises for Tenant's occupancy, and the demised premises shall be leased to Tenant in its "as is" condition on the date hereof. The taking of possession of the demised premises by Tenant shall be conclusive evidence as against Tenant that, at the time such possession was so taken, the demised premises and the building were in good and satisfactory condition.

(b) Notwithstanding the foregoing, Owner shall:

- (i) deliver the demised premises to the Tenant clear of the debris currently in existence within the demised premises;
- (ii) make the roof over the demised premises free of leaks;
- (iii) fix or otherwise seal up broken windows;

- (iv) install submeter for measuring electricity usage for the demised premises (Tenant shall be required to distribute electricity in the demised premises)
- (v) install submeter for measuring water usage for the demised premises (Tenant shall be required to distribute water in the demised premises)

52. Insurance.

(a) Tenant agrees to maintain throughout the term of this lease, with responsible insurance companies (i) comprehensive general liability insurance against all claims, demands or actions for injury to or death of person or property to the minimum limits of liability equal to the combined single limit with respect to each occurrence in an amount of not less than \$3,000,000 for injury (or death) and damage to property, including products liability and independent contractors' coverage, with broad form endorsement, arising from, related to, or in any way connected with the conduct and operation of Tenant's business in the demised premises, or caused by actions or omissions to act, where there is a duty to act, of Tenant, its employees, agents, servants and contractors, which insurance shall name Owner and its agents as additional insureds, and (ii) all-risk insurance, with extended coverage (including insurance on all plate glass in and about the demised premises), vandalism, malicious mischief, sprinkler leakage and flood endorsements attached, as Owner reasonably may, from time to time, approve or require, covering all fixtures and equipment, improvements or betterment's installed by or at the expense of Tenant in or about the demised premises to the extent of at least 100% of their replacement value, without deduction for depreciation, but, in any event, in an amount sufficient to prevent Tenant from becoming a co-insurer under the provisions of applicable policies. All of said insurance shall provide that it shall not be subject to cancellation, termination or change, except after at least thirty (30) days' prior written notice to Owner. Certificates of insurance required by this Article shall be deposited with Owner not less than fifteen (15) days prior to the day Tenant is required hereunder to carry such insurance and, upon renewals of said policies, not less than fifteen (15) days prior to the expiration of the term of such coverage. The insurance policies required hereby may be blanket insurance policies listing the Premises specifically as an insured location in amounts applicable to the Premises not less than those specified above.

(b) Tenant and Owner shall use their best efforts to obtain and maintain provisions in their all-risk insurance policies to the effect that such policy or policies shall not be invalidated should the insured waive in writing, prior to a loss, any or all right of recovery against the other party for loss occurring to the property affected thereby. In the event that at any time either Tenant's or Owner's all-risk insurance carrier shall not include such or similar provision in such insured party's policies, such party shall have the other party named in such insured party's policy or policies as an additional insured. Should any additional premium be imposed for the inclusion of any such provision or for

naming the other party as an additional insured, as the case may be, the other party shall pay such additional premium to such party, except, however, that in lieu of such payment, the other party may waive the provisions of this paragraph. In the event the other party shall be named as an additional insured in accordance with the foregoing, such party agrees to endorse promptly, without recourse, any check, draft or order for the payment of money representing the proceeds of any such policies or representing any other payment growing out of or connected with any such policy, and the other party does hereby irrevocably waive any and all rights in and to such proceeds and payments. If either party maintains such insurance policies in accordance with the foregoing, the insured party agrees to look solely to the proceeds of such policies to compensate such party for any loss covered thereunder.

(c) Any insurance policy required to be carried by the Tenant may be maintained by means of a policy or policies of blanket insurance covering additional items or locations, so long as the demised premises are specifically covered in the amounts herein provided.

53. Bankruptcy.

Without limiting any of the provisions of Articles 16, 17 or 18 hereof, if pursuant to the Bankruptcy Code of 1978, as the same may be amended, Tenant is permitted to assign this lease in disregard of the obligations contained in Articles 11 and 65 hereof, Tenant agrees to that adequate assurance of future performance by the assignee permitted under such Code shall mean the deposit of cash security with Owner in an amount equal to the sum of one year's Fixed Rent reserved hereunder plus an amount equal to all additional rent payable under this lease for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Owner, without interest, for the balance of the Term as security for the full and faithful performance of all of the obligations under this lease on the part of Tenant yet to be performed. If Tenant receives or is to receive any valuable consideration for such an assignment of this lease, such consideration, after deducting therefrom (A) the brokerage commissions, if any, and other expenses reasonably incurred by Tenant for such assignment and (B) any portion of such consideration reasonably designated by the assignee as payment for the purchase of Tenant's property in the demised premises, shall be and become the sole and exclusive property of Owner and shall be paid over to Owner directly by such assignee. In addition, adequate assurance shall mean that any such assignee of this lease shall have net worth, exclusive of good will, equal to at least thirty (30) times the aggregate of the Fixed Rent reserved hereunder plus all additional rent for the preceding calendar year as aforesaid.

54. Local Law 5.

Supplementing Article 6,

(a) All work performed or installations made by Tenant (or by Owner at Tenant's request and expense) in and to the demised premises shall be in compliance with the requirements of Local Law 5 of 1973 of the City of New York, as heretofore and hereafter amended ("Local Law 5"). The foregoing shall include, without limitation, (i) compliance with the compartmentalization requirements of Local Law 5, (ii) relocation of existing fire detection devices, alarm signals and/or communication devices necessitated by the alteration of the demised premises, and (iii) installation of such additional fire control or detection devices as may be required by applicable governmental or quasi-governmental rules, regulations or requirements (including, without limitation, any requirements of the New York Board of Fire Underwriters) as a result of Tenant's manner of use of the demised premises. The design of such installations shall be at Tenant's discretion so long as the results comply with Local Law 5.

(b) Owner shall not be responsible for any damage to Tenant's fire control or detection devices nor shall Owner have any responsibility for the maintenance or replacement thereof. Tenant shall indemnify Owner from and against all loss, damage liability or expense (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by Owner by reason of the installation and/or operation of any such devices.

(c) All work and installations required to be undertaken by Tenant pursuant to this Article shall be performed at Tenant's sole cost and expense and in accordance with plans and specifications and by contractor's previously approved by Owner.

(d) The fact that Owner shall have heretofore consented to any installations or alterations made by Tenant in the demised premises shall not relieve Tenant of its obligations pursuant to this Article with respect to such installation or alterations.

55. Tenant's Alterations.

(a) Tenant shall not make or perform, or permit the making or performance of, any alterations, installations, improvements, additions or other physical changes in or about the demised premises (collectively, "Alterations") without Owner's prior consent. All Alterations shall be done at Tenant's expense and at such times and in such manner as Owner may from time to time reasonably designate pursuant to the conditions for Alterations prescribed by Owner for the demised premises. Prior to making any Alterations, Tenant (1) shall submit to Owner detailed plans and specifications (including layout, architectural, mechanical and structural drawings) for each proposed Alteration and shall not commence any such Alteration without first obtaining Owner's approval of such plans and specifications, (2) shall, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-

governmental bodies (including without limitation all approvals required in connection with Article 67(b) hereof, and (3) shall furnish to Owner duplicate original policies of worker's compensation insurance (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and comprehensive public liability (including property damage coverage) insurance in such form, with such companies, for such periods and in such amounts as Owner may reasonably require, naming Owner and its agents as additional insureds. Upon completion of such Alteration, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Alteration required by any governmental or quasi-governmental bodies and shall furnish Owner with copies thereof. All materials and equipment to be incorporated in the demised premises as a result of all Alterations shall be new and first quality; no such materials or equipment shall be subject to any lien, encumbrance, chattel mortgage, title retention or security agreement. Tenant shall not, at any time prior to or during the Term, directly or indirectly employ, or permit the employment of, any contractor, mechanic or laborer in the demised premises, whether in connection with any Alteration or otherwise, if, in Owner's sole discretion, such employment will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the building by Owner, Tenant or others. In the event of any such interference or conflict, Tenant, upon demand of Owner, shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the building immediately.

(b) No approval of any plans or specifications by Owner or consent by Owner allowing Tenant to make any Alterations or any inspection of Alterations made by or for Owner shall in any way be deemed to be an agreement by Owner that the contemplated Alterations comply with any legal requirements or insurance requirements or the certificate of occupancy for the building nor shall it be deemed to be a waiver by Owner of the compliance by Tenant of any provision of this lease.

(c) The plan of the premises annexed hereto is for identification purposes only and any dimensions, distances and locations shown on the portions of the plan annexed hereto representing the premises are approximate only and any changes or variations between the actual dimensions, distances and locations and those shown on said plan shall not be deemed material and shall in no way affect the obligations of Tenant hereunder.

(d) (i) Tenant hereby agrees that it shall not have the right to alter the exterior of the building in any manner whatsoever without Owner's prior written consent, which consent Owner may withhold for any reason or for no reason.

(ii) Tenant, at its expense and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violations arising from or otherwise connected with Alterations which shall be issued by the Department of Buildings or any other public or quasi-public authority having or asserting jurisdiction. Tenant shall defend, indemnify and save harmless Owner against any and all mechanic's

and other liens filed in connection with Alterations, including the liens of any security interest in, conditional sales of, or chattel mortgages upon, any materials, fixtures or articles so secured against all costs, expense and liabilities incurred in connection with any such lien, security interest, conditional sale or chattel mortgage or any action or proceeding brought thereon. Notice is hereby given that Tenant has no power, authority or right to do any act or make any contract which may create or be the foundation for, any lien upon the fee or leasehold estate of the Owner in the demised premises or upon improvements now or hereafter erected upon the demised premises or the land or building of which they are a part. If Tenant shall fail to procure the satisfaction or discharge of all liens as and when required by this Lease, Owner may pay the amount of such lien or discharge the same by deposit or, alternatively, by bond or in any manner according to law, and pay any judgment recovered in any action to establish or foreclose such lien or order, and any amount so paid, together with expenses incurred by the Owner, including all reasonable attorneys' fees and disbursements incurred in any defense of or in any such action, bonding or other proceeding shall be payable by Tenant as additional rent hereunder.

(e) Tenant agrees that none of the Alterations shall be done in a manner which would create any work stoppage, picketing, labor disruption or dispute or violate Owner's union contracts affecting the land and/or building, or interference with the business of Owner or any lessee or occupant of the building. In the event of the occurrence of any condition described above arising from Tenant's work, Tenant shall, immediately upon notice from Owner, cease the manner of exercise of such right giving rise to such condition. In the event Tenant fails to cease such manner of exercise of its rights as aforesaid, Owner, in addition to any rights available to it under this Lease and pursuant to law, shall have the right to injunction with notice.

(f) Tenant expressly agrees that no sign shall be installed on the exterior of the building. In any event of a violation of this Article, in addition to Owner's other remedies under this Lease and under the provisions of law, Owner may itself, at Tenant's expense, remove any sign without liability or obligation to Tenant.

(g) (i) Upon delivery of the demised premises by Owner in accordance with Section 41(a) of this Lease, Tenant shall, at its sole cost and expense, perform the following initial alterations on the demised premises ("Initial Alterations"):

- (A) erect a demising wall from the floor to the ceiling which demising walls shall separate the Tenant's demised premises from the adjoining space. The demising wall must be in compliance with all Legal Requirements;
- (B) perform such other construction work on the demised premises, as required by all Legal Requirements in order for Tenant to obtain a certificate of occupancy permitting

Tenant's use of the demised premises. It being understood and agreed by Tenant that Tenant shall be required, at its sole cost and expense to obtain any amendment to the certificate of occupancy in order for Tenant to use the demised premises in accordance with the terms of this Lease.

(ii) Tenant will perform the Initial Alterations in accordance with all of the provisions this Article 55.

(i) "Legal Requirements" shall mean all present or future laws, statutes and ordinances including building codes and zoning regulations and ordinances ordinary and extraordinary, foreseen or unforeseen, and the orders, rules, regulations, directives, recommendations and requirements of all federal, state, county, city and borough departments, bureaus, boards, agencies, offices, commissions and other subdivisions thereof, or of any official thereof, or of any other governmental, public or quasi-public authority, or if the New York and National Board of Fire Underwriters or other body having similar functions, or of any insurance company having policies outstanding with respect to the demised premises or the improvement in which the demised premises forms a part, whether now or hereafter in force; and all requirements of all mortgages, ground leases, and insurance policies covering or applicable to the demised premises or the building.

56. Estoppel Certificate.

Owner and Tenant, at any time, and from time to time, upon at least ten (10) days' prior notice by the requesting party, shall execute, acknowledge and deliver to the requesting party, and/or to any other person, firm or corporation specified by the requesting party ("Recipient"), a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the Fixed Rent and additional rent have been paid, stating whether or not there exist any defaults by the requesting party under this Lease and, if so, specifying each default, and any other matters reasonably requested by requesting party or the Recipient.

57. Holdover and Personal Liability.

In the event Tenant shall hold over after the expiration of the Term, the parties hereby agree that Tenant's occupancy of the demised premises after the expiration of the Term shall be upon all of the terms set forth in this lease except Tenant shall pay as rent for the holdover period an amount equal to the higher of (a) an amount equal to two (2) times the sum of (1) the pro rata Fixed Rent payable by Tenant during the last year of the Term and (2) all monthly installments of additional rent payable by Tenant pursuant to the terms of this lease that would have been billable monthly by Owner had the Term not expired or (b) an amount equal to the then market rental value for the demised premises as shall be established by Owner giving notice to Tenant of Owner's good faith

estimate of such market rental value. The payment of such holdover rent shall in no way limit Owner's claims for consequential damages caused by Tenant's holdover.

58. Conditional Limitation.

In the event that two times during the term of the Lease Tenant shall have defaulted in the payment of Fixed Rent or additional rent, or any part of either, then, notwithstanding that such defaults may have been cured, any further default by Tenant in the payment of Fixed Rent or additional rent at any time during the term of the Lease shall be deemed to be a violation of a substantial obligation of this lease by Tenant and Owner may serve a written three (3) days' notice of cancellation of this lease upon Tenant and, upon the expiration of said three (3) days, this lease and the Term shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the Term, and Tenant shall then quit and surrender the demised premises to Owner, but Tenant shall remain liable as elsewhere provided in this lease.

59. Limitation on Rent.

If on the Commencement Date, or at any time during the Term, the Fixed Rent or additional rent reserved in this lease is not fully collectible by reason of any Federal, State, County or City law, proclamation, order or regulation or direction of a public officer or body pursuant to law (collectively "Law"), Tenant agrees to take such steps as Owner may reasonably request to permit Owner to collect the maximum rents which may be legally permissible from time to time during the continuance of such legal rent restriction (but not in excess of the amounts reserved therefore under this lease). Upon the termination of such legal rent restriction, Tenant shall pay to Owner, to the extent permitted by Law, an amount equal to (a) the Fixed Rent and additional rent which would have been paid pursuant to this lease but for such legal rent restriction, less (B) the Fixed Rent and additional rent paid by Tenant to Owner during the period such legal rent restriction was in effect.

60. Acceptance of Keys.

If Owner or Owner's managing or rental agent accepts from Tenant one or more keys to the demised premises in order to assist Tenant in showing the demised premises for subletting or other disposition or for the performance of work therein for Tenant or for any other purpose, the acceptance of such key or keys shall not constitute an acceptance of surrender of the demised premises nor a waiver of any of Owner's rights or Tenant's obligations under this lease including, without limitation, the provisions relating to assignment and subletting and the condition of the demised premises.

61. Licenses and Permits.

Tenant shall not use or suffer or permit any person to use the demised premises for any unlawful purposes and shall obtain and maintain at Tenant's sole cost and expense all licenses and permits from any and all governmental authorities having jurisdiction over the demised premises which may be necessary for the conduct of Tenant's business therein. Owner agrees to cooperate with Tenant in the signing of documents requiring Owner's signature, provided that Owner shall incur no expenses either in the application process or the review of the same. Tenant shall comply with all applicable laws, resolutions, codes, rules and regulations of any department, bureau, agency or any governmental authority having jurisdiction over the operation, occupancy, maintenance and use of the demised premises for the purposes set forth herein. Tenant agrees to indemnify and save Owner harmless from and against any claim, penalty, loss, damage or expense (including reasonable attorneys' fees and disbursements) imposed by reason of Tenant's violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction related to Tenant's use and occupancy of the demised premises.

62. Cleaning and Rubbish Removal.

Tenant agrees that Owner shall not be obligated hereunder to provide any cleaning or rubbish removal services with respect to the demised premises. Tenant shall at its own cost and expense, clean and remove all garbage, waste, rubbish and refuse from the demised premises and the building in accordance with such rules and regulations Owner deems necessary or desirable for the proper operation of the building. In addition, Tenant agrees that there shall be no stacking of empty cartons or any garbage or other debris outside of the demised premises. In connection with the employment of any contractor for the performance of such services, Tenant shall deliver a certificate of insurance evidencing workman's compensation insurance and general liability insurance for any occurrence in or about the building, naming Owner and its agents as parties insured, in such amounts as Owner may designate and with insurers satisfactory to Owner. Tenant agrees not to employ any person or firm for cleaning or other services in the demised premises, the employment of whom would cause a strike by any union connected with any employees employed directly or indirectly by Owner. Tenant shall, at its own cost and expense, install such mechanical device or system required in Owner's judgment to eliminate and/or control objectionable odors, emanating from Tenant's space.

63. Appearance of the Demised Premises.

Tenant covenants to maintain the demised premises in a condition of proper cleanliness, orderliness and state of attractive appearance at all times in keeping with the standards of the building. Such standards of cleanliness, orderliness, appearance and maintenance shall be reasonably determined by Owner. Should Tenant fail to correct any condition unsatisfactory to Owner within a reasonable time after written notice from Owner to Tenant of such condition, such failure shall constitute a default hereunder entitling Owner to all of its remedies in the event of default.

64. Plumbing System.

Tenant shall not discharge any corrosive or clogging substances through the drain lines from the demised premises. If any damage to or clogging of the plumbing system used in the building (whether such damage is within or outside the demised premises) occurs on account of any action, omission or negligence of Tenant or Tenant's employees, agents or contractors, Owner shall perform such maintenance and repairs as are necessitated thereby and Tenant, upon demand by Owner, shall pay to Owner as additional rent, an amount equal to the cost of such repairs. In addition, Tenant shall be responsible for any consequential damages resulting from such action, omission or negligence.

65. Electricity.

In accordance with Article 51, Owner shall install an electric submeter for the demised premises. Tenant shall maintain and repair the electric submeter for the demised premises for the Term of the Lease. Tenant shall pay to Owner for the electricity consumed, as shown on said submeter, as and when bills are rendered, and on default in making such payment Owner may pay such charges and collect the same from Tenant, as additional rent (in addition to any late fee and other remedies that Owner may have against Tenant).

66. Utilities

(a) Water – Supplementing paragraph 29, in accordance with Article 51, Owner shall install a water submeter for the demised premises. Tenant shall maintain and repair such submeter during the Term of the Lease. Tenant shall pay to Owner for the water consumed, as shown on said submeter, as and when bills are rendered, and on default in making such payment, Owner may pay such charges and collect the same from Tenant, as additional rent (in addition to any late fee and other remedies that Owner may have against Tenant).

(b) Gas – Tenant shall pay its pro rata share of gas consumed as measured by the meter for the building as measured by the public utility, as and when bills are rendered, and on default in making such payment. If Tenant's pro rata share is insufficient to cover the actual gas consumed by Tenant, as determined by Owner, in its reasonable judgment, Tenant shall pay for such additional gas consumed by Tenant. Owner may pay such charges and collect the same from Tenant, as additional rent (in addition to any late fee and other remedies that Owner may have against Tenant). Owner may install a gas submeter and thereby measure Tenant's gas consumption at the demised premises. If a separate submeter is installed, Tenant shall maintain and repair such submeter throughout the Term of the Lease.

67. Miscellaneous.

(a) Tenant shall not maintain or repairs its vehicles (including its trucks) on, near or in front or adjacent to the demised premises.

(b) Tenant shall be responsible for all parking tickets attributed to Tenant's vehicles (including its trucks) or the vehicles of its employees, invitees, licensees, customers, vendors, and guest of Tenant.

(c) Tenant and its employees, invitees, licensees, customers, vendors and guests shall not be permitted to park their vehicles (or otherwise let such vehicles idle or stand) anywhere around the building except for the area in front of Sections 1, 2 and 3 of the demised premises (as shown on Exhibit A) along Stillwell Avenue.

(d) Tenant and its employees, invitees, licensees, customers, vendors and guests shall not be permitted to park their vehicles or otherwise use the driveway or side loading docks at the demised premises.

(e) Tenant shall keep and maintain the demised premises free from all vermin and insect infestation and shall have the demised premises serviced by a reputable exterminator as needed.

(f) In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this lease to be performed by such party and such delay or hindrance is due to : (i) strikes, lockouts, or other labor disputes; (ii) inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty or other causes of a like nature reasonably beyond the control of the party so delayed or hindered, the performance of such work, service, or other act, other than the payment by Tenant of any rent or other charges due hereunder, shall be excused for the period of such delay and the period of performance of such work, service, or other act shall be extended by a period equivalent to the period of such delay.

68. Assignment and Subletting.

Supplementing Article 11 hereof:

(a) Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this lease, nor underlet, or suffer or permit the demised premises or any part thereof to be used or occupied by others, without the prior written consent of Owner in each instance, which may be withheld in its sole discretion. In no event shall Tenant be entitled to sublet or underlet less than the entire demised premises. If this lease

be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no assignment, underletting, occupancy or collection shall be deemed a waiver of the provisions hereof, the acceptance of the assignee, undertenant or occupant as tenant, or a release of tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting. In no event shall any permitted sublessee assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without Owner's prior written consent in each instance. A modification, amendment or extension of a sublease shall be deemed a sublease. If any lien is filed against the demised premises of the building of which the same form a part for brokerage services claimed to have been performed for Tenant, whether or not actually performed, the same shall be discharged by Tenant within ten (10) days thereafter, at Tenant's expense, by filing the bond required by law, or otherwise, and paying any necessary sums, and Tenant agrees to indemnify Owner and its agents and hold them harmless from and against any and all claims, losses or liability resulting from such lien for brokerage services rendered.

(b) When Tenant requests Owner's consent to a specific assignment or subletting, it shall submit in writing to Owner (i) the name and address of the proposed assignee and sublessee, (ii) a duly executed counterpart of the proposed agreement of assignment or sublease, (iii) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or sublessee, and as to the nature of its proposed use of the space, and (iv) banking, financial or other credit information relating to the proposed assignee or sublessee reasonable sufficient to enable Owner to determine the financial responsibility and character of the proposed assignee or sublessee.

(c) Upon receiving Owner's written consent (and unless theretofore delivered to Owner) a duly executed copy of the sublease or assignment shall be delivered to Owner within ten (10) days after execution thereof. Any such sublease shall provide that the sublessee shall comply with all applicable terms and conditions of this lease to be performed by the Tenant hereunder. Any such assignment of lease shall contain an assumption by the assignee of all of the terms, covenants and conditions of this lease to be performed by the Tenant.

(d) Anything herein contained to the contrary notwithstanding:

(i) Tenant shall not publicly advertise (but may list with brokers) its space for assignment or subletting at a rental rate lower than the greater of the then building rental rate for such space or the rental rate then being paid by Tenant to Owner.

(ii) The transfer of a majority of the issued and outstanding capital stock of any corporate tenant or subtenant of this lease or a majority of the total interest in any partnership tenant or subtenant, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, shall be deemed an assignment of this lease or of such sublease. The transfer of outstanding capital stock of any corporate tenant, for purposes of this Article, shall not include (A) the transfer of such stock among the existing shareholders of Tenant or the members of the immediate families of the existing shareholders or (B) the sale of such stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, and which sale is effected through the "over-the-counter market" or through any recognized stock exchange.

(iii) No assignment or subletting shall be made:

(A) To any person or entity which shall at that time be a tenant, subtenant or other occupant of any part of the building of which the demised premises form a part, or who dealt with Owner or Owner's agent (directly or through a broker) with respect to space in the building during the six (6) months immediately preceding Tenant's request for Owner's consent, unless at the time of the assignment or subletting Owner has no available space in the Building.

(B) By the legal representatives of the Tenant or by any person to whom Tenant's interest under this Lease passes by operation of law, except in compliance with the provisions of this Article.

(C) To any person or entity for the conduct of a business which is not in keeping with the standards and the general character of the building of which the demised premises form a part.

(e) If Owner shall consent to such assignment or subletting, then Tenant thereafter shall pay to Owner a sum equal to (a) any rent or other consideration paid to Tenant by any subtenant which (after deducting the costs of Tenant, if any, in effecting the subletting, including reasonable alteration costs, commissions and legal fees) is in excess of the rent allocable to the subleased space which is then being paid by Tenant to Owner pursuant to the terms thereof; and (b) any other profit or gain (after deducting any necessary expenses incurred) realized by Tenant from any such subletting or assignment. All sums payable hereunder by Tenant shall be payable to Owner as additional rent upon receipt thereof by Tenant.

69. Existing Premises

Owner and Tenant acknowledge that Tenant is currently occupying separate space in the building from which the Tenant will be relocating to the demised premises

("Existing Premises"). Owner acknowledges that there will be a transition period wherein Tenant will be relocating from its Existing Premises to the demised premises. Beginning on the Effective Date and continuing until Tenant vacate the Existing Premises, Tenant shall pay base rent for the Existing Premises at the rate of \$2,000 per month ("Existing Premises Base Rent") and shall pay as additional rent, charges for water, electricity and gas consumed at the building as measured by the existing meter located at the building. If the effective date is not on the first of a month, Tenant shall pay a pro-rata share of the Existing Premises Base Rent for the month in which the Effective Date shall occur.

Tenant acknowledges and agrees that in the event Tenant shall fail to vacate the Existing Premises by no later than ninety (90) day from the Commencement Date, ("Outside Date") such failure to vacate the Existing Premises by the Outside Date shall constitute a default under this Lease.

70. New York City Industrial Development Agency

1. Tenant acknowledges that as of the Effective Date (as defined in Article 71 below), the owner of the building and land comprising all of 1624 Stillwell Avenue, Bronx, New York (the "Property") is the New York City Industrial Development Agency ("IDA") who leases the same to CMR Properties, LLC ("CMR") pursuant to a Lease Agreement, dated as of May 1, 2002 who simultaneously subleases the Property to the Owner pursuant to a Sublease Agreement dated as of May 1, 2002, between CMR and Owner.

2. Tenant acknowledges and agrees that IDA is merely acting as owner of the Property for the sole and exclusive purpose of allowing CMR and Owner to participate in the IDA Straight Lease Program and that IDA has no other interest in the Property.


3. Tenant acknowledges and agrees that: (1) IDA does not have privity with Tenant; (2) in no event shall Tenant make any claim, suit or action against IDA as the owner of demised premises or the Property or as a landlord of CMR, Owner or Tenant, and (3) Tenant releases IDA for any and all liability, damages arising out of any past, present or future claims that Tenant may have against IDA in its capacity as owner of the Property.

71. Effectiveness of Lease

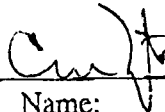
Tenant acknowledges that CMR is currently the contract vendee of the building and has not yet acquired same. This Lease shall not be effective until all of the following shall have occurred: (1) CMR shall acquire the Property, (2) CMR shall convey the Property to the IDA, (3) IDA shall lease the Property to CMR in accordance with the Lease Agreement (referred to in Article 70 above), and (4) CMR shall sublease the Property to Owner in accordance with the terms of the Sublease Agreement (referred to in Article 70 above). The date on which Items 1-4 above shall occur shall be deemed to be the Effective Date. Tenant acknowledges that of Items 1-4 above shall not occur (for any

reason), this Lease shall be deemed null and void, Owner shall return to Tenant the payments made in accordance with Article 41(c) and neither party shall have any further rights or obligations hereunder.

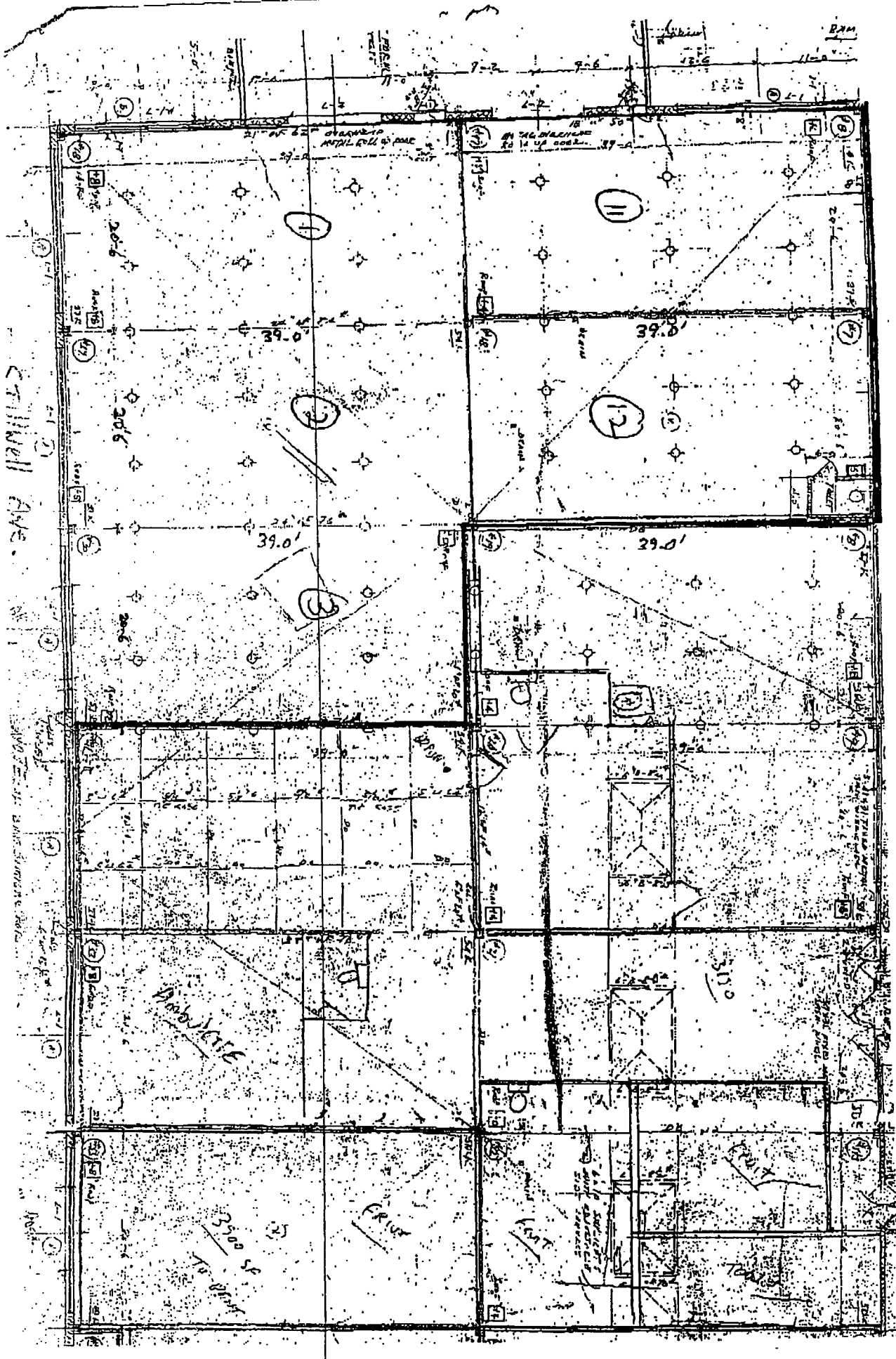
CITY WIDE MOBILE RESPONSE CORP.

By: 
Member

C.Z. PRODUCE, INC.

By: 
Name:
Title:

**EXHIBIT A
FLOOR PLAN**



Sections 1, 2, 3, 11, 12

EXHIBIT A

SCHEDULE A

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of CMR Properties, 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 May 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):

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

(ii) except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, 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 applicable];

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

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

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

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

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

(viii) attached hereto are (a) a certificate of the general contractor for the Project to the effect that all subcontractors, supplies, material and laborers have been paid all sums done and owing to them, (b) 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 and whose contract for work or materials was in excess of \$50,000, (c) a permanent certificate of occupancy, (d) 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 (e) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 of the Lease Agreement in respect of the Facility have been paid in full.

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

CMR PROPERTIES, LLC,
as Lessee

By: _____
Name:
Title:

