EXECUTION COPY

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY
as Lessor

and

FEDERAL EXPRESS CORPORATION
as Lessee

LEASE AGREEMENT (621 WEST 48TH STREET)

Affecting the leasehold premises more particularly described in Appendix A-2 hereof and known by the street address 621 West 48th Street in the County of New York, City and State of New York which is also known as Block 1096, Lot 1001 (formerly known as Lots 1, 14, 15, 21, 24 and 38) on the official Tax Map of New York County

Dated as of December 1, 2001

New York City Industrial Development Agency
2001 Federal Express Corporation Project

Record and Return to:
WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes, III, Esq.
File No. 90570.73

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LEASE AGREEMENT

THIS LEASE AGREEMENT (621 WEST 48TH STREET), made and entered into as of December 1, 2001, 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 **FEDERAL EXPRESS CORPORATION** (the "Company"), a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York, having an office at 3620 Hacks Cross Road, 3rd Floor, Building B, Memphis, Tennessee 38125, party of the second part, (capitalized terms used but not defined in the recitals to this Agreement shall have the respective meanings assigned such terms in Section 1.1 hereof or in the PILOT Agreement referred to herein):

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

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Agency was established for the benefit of The City of New York (the "City") and the inhabitants thereof;

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company and/or the Developer, on behalf of the Company, to construct, install and equip a certain commercial facility within City consisting of the construction, improvement and equipping of an approximately 241,470 square foot building to be constructed on those certain lots pieces or parcels of land generally known by the street address 621 West 48th Street, New York, New York, and otherwise described in Appendix A-1 attached hereto ("the Facility Realty"), for use in part by the Company in the Company Business; and

WHEREAS, Agency financial assistance and related Agency benefits are necessary to provide employment in, and are beneficial for the economy of, the City and are reasonably necessary to induce the Company and the Developer to proceed with the Project; and

WHEREAS, under that certain agreement of lease dated November 21, 2000, as amended (the "Prime Lease"), between the Company and the Developer, the Company is a tenant of certain premises at the Facility Realty; and

WHEREAS, to accomplish the purposes of the Act, and in furtherance of said purposes, on February 13, 2001, the Agency adopted a resolution (the "Resolution") authorizing a project which among other things includes, the acquisition of the Agency Owned Facility Realty, the leasing of the Agency Owned Facility Realty to the Developer, the subleasing of the Project Premises from Company, the sub-subleasing of the Project Premises to the Company, and the acquisition from time to time of machinery, equipment and certain other tangible personal property for use by the Company at the Project Premises, all for use in conducting the Company Business; and

WHEREAS, the Developer has conveyed to the Agency fee title (subject to a possibility of reverter) to the Agency Owned Facility Realty which comprises all of the premises currently leased by the Developer to Company pursuant to the Prime Lease; and

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

ARTICLE I
Definitions and Representations

Section 1.1. Definitions. Capitalized terms used herein but not otherwise defined below shall have the same meanings as used in the Company Lease Agreement herein below defined.

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.

Actual Real Property Taxes shall mean, for any Tax Year, the Real Property Taxes which would have been due and payable with respect to the Project Premises but for the Agency's title to the Project Premises, calculated on the basis of the then current assessed value and the then current Real Property Tax rate.

Additional Agency Owned Units shall mean those Units as shall from time to time become part of the Agency Owned Units pursuant to Section 6.19 hereof.

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

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.

Agency Owned Facility Realty shall mean that Unit or those Units to which the Agency shall from time to time have title and as shall be subject to the provisions of the Overlease Agreement, the Company Lease and this Agreement, and as described in the Description of Agency Owned Facility Realty in the Appendices to this Agreement, the Overlease Agreement and the Company Lease, together with the Common Elements, if any, appurtenant to such Agency Owned Units, and all rights or interests of the Agency therein or appertaining thereto, including the allocable interest of the Agency Owned Units in the land and other Common Elements relating thereto, together with all fixtures (other than trade fixtures) and improvements now or at any time made or situated thereon, and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto, subject, however, to the provisions of Sections 5.1, 6.18, 6.19, 7.2 and 9.2 hereof providing for the addition and release of Agency Owned Units. Agency Owned Facility Realty shall not include Company Property.

Agency Owned Unit or Agency Owned Units shall mean each of those Units to which the Agency shall from time to time have title and as shall be or become subject to the Prime Lease, the Company Lease and this Agreement.

Agency Requirements shall mean all rules, regulations or policies adopted by the Agency and all federal, state and local laws, rules and regulations affecting the Agency or any activities of the Agency, including, but not limited to, laws, rules and regulations governing the Agency.

Aggregate Benefits shall mean the aggregate amount of Benefits actually received in the aggregate by the Company and the Developer for the benefit of the Company for the period commencing from the date of original issuance of the First Preliminary Sales Tax Letter and Second Preliminary Sales Tax Letter through the date of computation thereof (or, if so stated, the date of the most recently completed Reporting Period).

Agreement shall mean this Lease Agreement, dated as of December 1, 2001, between the Agency and the Company, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean a commercial facility for use in connection with the Company's business of time-definite transportation of packages and freight.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director or Deputy Executive Director of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Company, the President, any Executive Vice President, Senior Vice President or Vice President of any of the Company, or any officer or employee of the Company authorized to perform specific acts or to discharge specific duties and (iii) in the case of the Developer, any member; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Base Building Equipment shall mean base building machinery and equipment, including, elevator, electrical, plumbing and HVAC fixtures, apparatus, systems and other similar fixtures, apparatus, systems, machinery and equipment to be installed in the Project Building and made a part thereof.

Benefits shall mean, collectively (but subject to the respective maximum amounts, if any, permitted therefor under this Agreement), (i) all Sales Tax Savings, (ii) all Real Property Tax Savings, (iii) all Mortgage Recording Tax Savings and (iv) all Energy Cost Savings (each of (i), (ii), (iii) and (iv) individually, a "Benefit"), availed of and to be availed of by the Company and/or the Developer for the benefit of the Company pursuant to any of the Developer Project Documents or the Company Project Documents and not repaid pursuant to Section 2.5 of this Agreement.

BIR Energy shall mean that energy made available to the BIR Premises by Con Ed at a reduced rate pursuant to the BIR Program.

BIR Energy Load shall mean that amount of megawatts of BIR Energy, which shall be the maximum BIR Energy demand commitment made by Con Ed to the Company for the BIR Premises.

BIR Premises shall mean the premises consisting of the Agency Owned Facility Realty, to the extent occupied and used by the Company.

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

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

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

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

Common Elements shall have the meaning set forth in the Condominium Declaration.

Company shall mean Federal Express Corporation, a corporation organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York and its permitted successors and assigns pursuant to Section 6.1 hereof (including any surviving, resulting or transferee corporation or other legal entity as provided in Section 6.1 hereof).

Company Business shall mean the time-definite transportation of packages and freight.

Company Lease shall mean the Company Lease Agreement (621 West 48th Street) of even date herewith between the Company and the Agency relative to the Agency Owned Facility Realty, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Company Project Costs shall mean to the extent permitted to be made in accordance with Agency Requirements, any costs incurred by the Company, as agent for the Agency, for the acquisition of Facility Equipment to be installed and used by the Company at the Project Premises.

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

Company Sales Tax Letters shall mean, collectively, the Second Preliminary Sales Tax Letter and the Sales Tax Letter (Company) and shall include any and all amendments or restatements thereof.

Condominium By-Laws shall mean the By-Laws established and adopted pursuant to the Condominium Declaration, as the same may hereafter be amended from time to time in accordance therewith, with this Agreement and with the Overlease Agreement.

Condominium Declaration shall mean the "Declaration Establishing a Plan for Condominium Ownership of the Premises 660 12th Avenue; 618-628 West 49th Street a/k/a 621-631 West 48th

Street; 606-616 West 49th Street a/k/a 617-619 West 48th Street; and 609-611 West 48th Street, New York, New York, Pursuant to Article 9-B of the Real Property Law of the State of New York", executed by the Developer, as Declarant, and dated December 11, 2001, as the same may be amended from time to time in accordance therewith, with the Lease Agreement and with the Overlease.

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

Construction Completion Certificate shall mean the certificate delivered by the Company and/or the Developer in the form of Schedule G hereto.

Construction Completion Date shall mean the earlier of (i) December 31, 2004, or (ii) the date upon which the Company and/or the Developer delivers to the Agency the Construction Completion Certificate as the date on which substantial completion of the construction of the Project Building has occurred.

Construction Period shall mean the period commencing on the Lease Commencement Date and ending on the Construction Completion Date.

Developer shall mean 660 Twelfth L.L.C. (formerly known as 621 West 48 L.L.C.), a limited liability company organized and existing under the laws of the State of New York and its successors and assigns under the Prime Lease.

Developer Improvements shall mean, collectively, the Facility Improvements Materials and Base Building Equipment.

Developer Lease shall mean the Amended and Restated Lease Agreement (621 West 48th Street), of even date herewith, from the Developer to the Agency, and shall include any and all supplements thereto and amendments or restatements thereof hereafter made in conformity therewith.

Developer Owned Facility Realty shall mean those certain premises located within the Project Building, other than Agency Owned Facility Realty, as shall be subject to the provisions of the Prime Lease, the Company Lease and this Agreement, if any, and as shall at any time hereafter be described in the Description of Developer Owned Facility Realty in the Appendices to this Agreement and the Company Lease, together with, in the case of any Unit, the Common Elements, if any, appurtenant to such Unit, and the allocable interest of such Unit in the land and other Common Elements relating thereto, together with all fixtures (other than trade fixtures) and improvements now or at any time made or situated thereon (including the Facility Improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto, subject, however, to the provisions of Sections 5.1, 6.18, 6.19, 7.2 and 9.2 hereof providing for the addition and release of all or a portion of the Developer Owned Facility Realty. Developer Owned Facility Realty shall include Facility Improvements made with respect thereto.

Developer Owned Units shall mean each of those Units to which the Developer shall from time to time have title.

Developer Project Costs shall mean, to the extent permitted to be made in accordance with Agency Requirements, any costs incurred by the Developer for the benefit of the Company, as an agent of the Agency, for (i) the acquisition of Base Building Equipment to be installed at the Facility Realty and (ii) the acquisition and installation of Facility Improvement Materials to be installed at the Facility Realty.

Developer Project Documents shall mean, collectively, the Deed Overlease, the Developer Lease, the Developer Sublease, the Indemnification Agreement, the PILOT Agreement and the Developer Sales Tax Letters.

Developer Sales Tax Letters shall mean, collectively, the Sales Tax Letter (Developer) and the First Preliminary Sales Tax Letter, and shall include any and all amendments or restatements thereof.

Developer Sublease shall mean the Amended and Restated Sublease Agreement (621 West 48th Street) of even date herewith from the Agency to the Developer, and shall include any and all supplements thereto and amendments and restatements thereof hereafter made in conformity therewith.

Employee shall mean (a) a Full-time Employee and (b) a Full-time Equivalent Employee.

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

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

Equipment Project shall mean the acquisition of the Facility Equipment by the Company to be used by the Company and its Affiliates at the Project Premises in accordance with the provisions hereof.

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

Extraordinary Costs of Administration shall mean any fees, costs or expenses that shall be paid or are payable by the Agency in its administration of the provisions of the Project Documents and which are not reasonably foreseeable on the Lease Commencement Date; it also being agreed that (i) any fees, costs or expenses as arise by reason of any additions to or releases from the Project Premises, pursuant to Section 6.18 or 6.19 hereof and (ii) the out of pocket third party fees and disbursements of the Agency's outside Project Counsel in performing services for the Agency (which services are not in the ordinary course) in connection with any of the Project Documents, shall in each case be deemed "Extraordinary Costs of Administration".

Facility Equipment shall mean that machinery, equipment and other tangible personal property acquired and installed in accordance with the Company Sales Tax Letters at the Project Premises as part of the Equipment Project pursuant to Section 2.1 hereof, together with all repairs,

replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Company Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof). "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personalty which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, *objets d'art* or other similar decorative items.

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

Facility Improvement Materials shall mean construction materials and tangible personal property to be used by the Developer to construct, improve and install the Project Building.

Facility Improvement Project shall mean the acquisition of the Agency Owned Facility Realty, the leasing of Project Premises by the Agency, the subleasing of the Developer Owned Facility Realty, the construction of the Project Building, and the acquisition and installation of Facility Improvement Materials and Base Building Equipment at the Project Building.

Facility Realty shall mean, collectively, the Agency Owned Facility Realty and the Developer Owned Facility Realty.

First Preliminary Sales Tax Letter shall mean, collectively, the First Preliminary Sales Tax Letter dated October 1, 2001 issued by the Agency to the Developer for the benefit of the Company and the Amended and Restated First Preliminary Sales Tax Letter dated December 1, 2001 issued by the Agency to the Developer for the benefit of the Company.

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

Fiscal Year of the Company shall mean a year of 365 or 366 days, as the case may be, commencing on June 1 and ending on May 31 of each calendar year, or such other fiscal year of similar length used by the Company for accounting purposes as to which the Company shall give notice thereof to the Agency within (90) days of such change.

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

Full-time Employee shall mean, with respect to an Annual Period, a natural person on the payroll of, receiving standard benefits from, and directly employed during such Annual Period by, the Company (and excluding any persons employed by or through temporary employment or similar agencies) and working within the City for the Company during such Annual Period on a "full-time basis" (i.e., working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

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

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

(ii) two (2) natural persons each of whom (x) is on the payroll of and is directly employed in the City during such Annual Period by the Company, (y) may or may not receive standard benefits, and (z) receives compensation based on the actual number of hours worked, it being understood and agreed that, for purposes of arriving at a "headcount" of Eligible Employees for purposes of this Agreement, two (2) such persons described in paragraph (i) or (ii) above working (subject to customary vacation, holiday and sick leave) an aggregate of at least forty (40) hours per week (and each of whom shall work at least a 20-hour work week, but less than a 35-hour work week) shall be counted as one (1) Eligible Employee.

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

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

Indemnification Agreement shall mean the Amended and Restated Indemnification Agreement of even date herewith between the Agency and the Developer, and shall include any and all supplements thereto and amendments or restatements thereof hereafter made in conformity therewith.

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

Lease Commencement Date shall mean December 26, 2001 the date on which this Agreement was executed and delivered.

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

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

Maximum Mortgage Recording Tax Savings Amount shall mean the aggregate Mortgage Recording Tax Savings to be made available to the Company and/or the Developer for the benefit of the Company during the period beginning on the Lease Commencement Date and ending on June 30, 2005 in an amount not to exceed $2,016,399.

Maximum Sales Tax Savings Amount (Company) shall mean, with respect to any Sales Tax Savings (Company) attributable to Company Project Costs, an amount not to exceed, $1,438,000, subject to the provisions hereof.

Maximum Sales Tax Savings Amount (Developer) shall mean, with respect to any Sales Tax Savings (Developer) attributable to Developer Project Costs, an amount not to exceed, $2,420,000, subject to the provisions of the Developer Project Documents and the provisions hereof.

Mortgage Recording Tax Savings shall mean the amount of Mortgage Recording Tax that the Developer would have been required to pay in connection with financing of the construction of the

Project Building but was not paid as a result of the Agency's fee title to the Agency Owned Facility Realty and leasehold title to the Developer Owned Facility Realty.

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

Non-Qualified User shall mean any Person other than the Company, any Affiliate or any consultant or technician providing services for or to the Company who shall use or occupy any of the Facility Realty (whether by lease, license or otherwise).

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

Ordinary Costs of Administration shall mean those fees, costs or expenses that the Agency shall reasonably be expected to pay or incur in its day-to-day administration of the provisions of the Project Documents and which are reasonably foreseeable on the Lease Commencement Date.

Overlease shall mean the Overlease Agreement (621 West 48th Street) of even date herewith by and between the Agency and the Developer, and shall include any and all supplements thereto and amendments or restatements thereof hereafter made in conformity therewith.

Permitted Encumbrances shall mean, as of any particular time, and with respect to the Project Property.

(i) the Condominium Declaration, the reverter clauses of the deeds conveying title to the Agency in the Agency Owned Facility Realty, the Overlease Agreement, the Prime Lease, the Company Lease and this Agreement (including the rights of the Company under Section 8.1 hereof);

(ii) any mortgages granted by the Developer, of its reversionary interest in the Agency Owned Units, its interest in the Overlease Agreement, its interest in the Prime Lease or its interest in the Developer Owned Units;

(iii) any Mortgage encumbering the Facility Realty as permitted by Section 4.2 of the Developer Sublease;

(iv) utility, access and other easements and rights-of-way, covenants and restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency (on request of the Agency) will not interfere with or impair the use by the Company of the Project Premises as provided in this Agreement;

(v) such other minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title (not specified in paragraphs (i), (ii) or (iii) above, or in paragraphs (vi), (vii), (viii), (ix), (x) or (xi) below) as normally exist with respect to property similar in character to the Project Premises and which do not, as set forth in a certificate of an Authorized Representative of the Company and/or the Developer delivered to, and upon the request of, the Agency, either individually or in the aggregate, materially impair the rights of the owner of the property affected thereby for the purpose for which it was acquired and held

by the Agency under this Agreement or purport to impose liabilities or obligations on the Agency;

(vi) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

(vii) 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 6.6 hereof;

(viii) those exceptions to title to the Agency Owned Facility Realty enumerated in the title insurance policies delivered pursuant to Section 2.4 hereof insuring the Agency's fee title in the Agency Owned Facility Realty;

(ix) any mortgage, lien, security interest or other encumbrance created by the Project Documents;

(x) all liens to which the Prime Lease is now or hereafter shall be subordinate.; and

(xi) any mortgage, lien, security interest, or other encumbrance permitted pursuant to the terms of the Prime Lease.

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

PILOT means payments in lieu of Real Property Taxes payable with respect to the Project Premises to the extent title thereto is held by the Agency.

PILOT Abatement Date shall mean the date upon which the Developer shall receive a reduction in Real Estate Taxes pursuant to Section 6 of the PILOT Agreement.

PILOT Agreement shall mean the PILOT Agreement, dated as of December 1, 2001, by and among, the Agency, the Company and the Developer.

PILOT Commencement Date shall mean July 1, 2002.

PILOT Termination Date shall mean the date on which the PILOT Agreement shall expire pursuant to Section 6(c)(ii) thereof.

Preliminary Sales Tax Letters shall mean, collectively, the First Preliminary Sales Tax Letter and the Second Preliminary Sales Tax Letter.

Prime Lease shall mean the Agreement of Lease, dated as of November 21, 2000, as amended between the Developer, as landlord, and the Company, as tenant, executed in connection with approximately 202,033 square feet of rentable space, comprising a portion of the cellar, first and second floors of the Project Building, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Prohibited Person shall mean

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

(ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or 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;

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

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

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

Project Building shall mean all buildings, structures, or improvements existing on or constructed at the Facility Realty, and any substitutions, additions, repairs or improvements thereto.

Project Costs shall mean, collectively, the Company Project Costs and the Developer Project Costs.

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

Project Documents shall mean, collectively, the Overlease, the Company Lease, the Lease Agreement, the PILOT Agreement, the Developer Lease, the Developer Sublease, the Sales Tax Letters, the Indemnification Agreement, and the Guaranty Agreement.

Project Premises shall mean, to the extent the Agency has title thereto, the premises containing approximately 202,033 square feet of rentable space, comprising a portion of the cellar, first and second floors at the Project Building.

Project Property shall mean, collectively, the Facility Equipment and the Project Premises.

Project Registry (Facility Equipment) shall have the meaning specified in Section 6.13 hereof.

Project Termination Date shall mean the earlier of (i) the PILOT Termination Date or (ii) December 31, 2030.

Real Property Tax Savings shall have the meaning ascribed to such term in the PILOT Agreement.

Remaining Benefits shall mean, collectively, the Remaining Mortgage Recording Tax Benefit, the Remaining Real Property Tax Benefit and the Remaining Sales Tax Benefits.

Remaining Mortgage Recording Tax Benefit shall mean the amount of Mortgage Recording Tax Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Mortgage Recording Tax Savings made available to the Company and/or the Developer for the benefit of the Company commencing on the Lease Commencement Date and ending six (6) months after Construction Completion Date from the Maximum Mortgage Recording Tax Savings Amount.

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

Remaining Sales Tax Benefit shall mean the amount of Sales Tax Savings remaining and unutilized and calculated as equal to the positive difference derived by subtracting the Sales Tax Savings recognized by the Company and/or the Developer, as the case may be, as of the end of the most recent Annual Period from the Maximum Sales Tax Savings Amount.

Rentable Square Feet shall have the meaning specified for such term in the PILOT Agreement.

Reporting Period shall mean (i) the period commencing on October 1, 2001 and ending on the Lease Commencement Date, (ii) the period commencing on Lease Commencement Date and ending on June 30, 2002, and (ii) thereafter, each Fiscal Year and (iii) the Final Reporting Period being the Fiscal Year, or portion thereof, ending on the last day of the Term.

Reporting Period Benefits shall mean, for any Reporting Period, the aggregate amount of Benefits actually received by the Company and the Developer for the benefit of the Company, as the case may be, during such Reporting Period.

Resolution shall mean the resolution of the Agency adopted on February 13, 2001, authorizing, among other things, the Project.

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

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

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

Sales Tax Letters shall mean, collectively, the Sales Tax Letter (Company) and the Sales Tax Letter (Developer).

Sales Tax Penalty Amount shall be an amount payable by the Company, which, at the Company's option, shall be satisfied either (A) (1) by payment to the N.Y.S. Department of Taxation and Finance in an amount equal to the Sales Tax Savings together with any applicable Government Penalty Amounts, (2) by delivery of evidence reasonably satisfactory to the Agency of such payment, and (3) by payment to the Agency an amount equal to the excess, if any, of (i) an amount equal to twelve percent (12%) per annum (or, if the Company and/or the Developer shall have acted in bad faith or engaged in willful misconduct with respect to such unauthorized use, eighteen percent (18%) per annum) multiplied by the Sales Tax Savings resulting from each such unauthorized Sales and Use Tax Exemption, calculated from each date on which such Sales Tax Savings were realized by the Company or the Developer, as the case may be, to the date of payment, over (ii) the Government Penalty Amount or (B) by payment to the Agency or the N.Y.S. Department of Taxation and Finance an amount equal to the Sales Tax Savings resulting from each unauthorized Sales and Use Tax Exemption together with interest thereon at the rate of twelve percent (12%) per annum (or 18% per annum, in the event of bad faith or willful misconduct of the Company and/or the Developer as described above) calculated from each date on which such Sales Tax Savings were realized by the Company and/or the Developer, as the case may be, to the date of payment.

Sales Tax Savings shall mean, the sum of the Sales Tax Savings (Company) and the Sales Tax Savings (Developer).

Sales Tax Savings (Company) shall mean all exemptions of Sales and Use Taxes actually realized by the Company pursuant to this Agreement, Company Sales Tax Letters and the Project Documents by reason of the Agency's interest in the Facility Equipment or any part thereof. Sales Tax Savings (Company) are subject to the Maximum Sales Tax Savings Amount (Company).

Sales Tax Savings (Developer) shall mean all exemptions of Sales and Use Taxes actually realized by the Developer for the benefit of the Company pursuant to the Developer Project Documents, the First Preliminary Sales Tax Letter, or the Sales Tax Letter (Developer) by reason of the Agency's interest in the Facility Realty or any part thereof. Sales Tax Savings (Developer) are subject to the Maximum Sales Tax Savings Amount (Developer).

Second Preliminary Sales Tax Letter shall mean that certain Second Preliminary Sales Tax Letter dated October 1, 2001 issued by the Agency to the Company, and shall include any and all amendments or restatements thereof.

State shall mean the State of New York.

Sublet Space Limitation shall have the meaning as defined in Section 6.18(c) hereof.

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

Temporary Removals shall have the meaning specified in Section 4.2 hereof.

Term or Term of this Agreement shall mean that period commencing on the Lease Commencement Date and terminating on the Project Termination Date as specified in Section 3.2 hereof.

Unit shall mean the applicable condominium unit(s) comprising the Project Building.

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

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

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

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability Company 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 makes the following representations and warranties as of the date hereof:

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

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

instrument.

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

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

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement, and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the Facility Improvement Project, the Equipment Project and the providing of certain benefits to the Company in connection therewith is reasonably necessary to discourage the Company from moving their respective operations to locations outside the City and to encourage the Company to proceed with the Facility Improvement Project.

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

(i) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is a party. The Company is duly qualified to do business in the State of New York.

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

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

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

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

(vi) The Project Premises consists of all of the property demised by the Developer to the Company under the Prime Lease.

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

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

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

(x) No Person or Persons other than the Company or the Developer is presently in occupancy or possession of any portion of the Project Premises.

(xi) Each representation or warranty made by or on behalf of the Company in the application and related materials submitted to the Agency for approval of the Project or by

the Company in this Agreement and in each other Project Document to which the Company is a party, is true, correct and complete in all material respects as of the date made. Each representation or warranty made by the Company in any report, certificate, financial statement or other instrument furnished pursuant to this Agreement and any other Project Document shall be true, correct and complete in all material respects as of the date made.

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

(xiii) As of the execution of this Agreement, the fiscal year of the Company shall mean a year of 365 or 366 days, as the case may be, commencing on June 1 and ending on May 31.

(b) The aggregate amount of sales and use tax benefits received by the Company pursuant to the Second Preliminary Sales Tax Letter is $0, which amount does not exceed the Maximum Sales Tax Savings Amount (Company).

(c) Based on information received from the Developer, the Company believes that the aggregate amount of sales and use tax benefits received by the Developer for the benefit of the Company pursuant to the First Preliminary Sales Tax Letter is $79,459.00, which amount does not exceed the Maximum Sales Tax Savings Amount (Developer).

(d) The Prime Lease obligates the Developer to design the Project in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

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

(f) The Company will use and operate the Project Premises in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

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

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

(i) Neither the Company nor any Affiliate thereof is a Prohibited Person.

Section 1.6. Acknowledgment of Consideration. It is acknowledged by the Company that the Agency will be providing the Benefits specified in this Agreement, the PILOT Agreement, and the other Project Documents principally upon the assumption and expectation that during the Term of this Agreement the Company will (i) occupy the Project Premises, (ii) maintain its occupancy of the Project Premises until the Project Termination Date, subject to the Prime Lease and subject to the Company's right to sublet, leave vacant or otherwise not occupy up to twenty percent (20%) of the rentable square footage thereof, and (iii) comply with its other covenants and agreements contained herein, and the Company and the Agency acknowledge and agree that all such obligations, covenants and agreements set forth in clauses (i) through (iii) above are of essential importance to the Agency and are the principal basis upon which the Agency is providing and will hereafter provide the above-mentioned benefits.

ARTICLE II
The Project

Section 2.1. The Project. (a) Simultaneously with the execution hereof, the Company shall cause the Developer to convey to the Agency good and marketable fee title to the Agency Owned Facility Realty (subject to reverter provisions in favor of the Developer for a nominal consideration therefor), free and clear of all liens, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) From and after the Lease Commencement Date, the Company shall cause the Developer to continue with the Facility Improvement Project in accordance with and pursuant to the terms of the Prime Lease.

(c) From and after the Lease Commencement Date, the Company will, on behalf of the Agency, proceed with the Equipment Project and will proceed with the undertaking of Project Costs with respect to the Equipment Project all to be effected in accordance with this Agreement and the Sales Tax Letter (Company).

(d) The Company shall be responsible for the payment of (i) all of the costs and expenses in connection with the preparation of any documents or instruments of conveyance and transfer of the Agency Owned Facility Realty and the Company's leasehold interest in the Project Premises and Facility Equipment to the Agency, and the delivery of any such instruments and documents and their filing and recording, if required, (ii) all costs and expenses in connection with the preparation of any documents relating to the Developer Owned Facility Realty (iii) all taxes and charges payable in connection with such conveyance, or attributable to periods prior to such conveyance, to the Agency as set forth in Section 2.1(a) hereof, if any, and (iv) shipping and delivery charges and all other reasonable expenses or claims incurred by or on behalf of the Company in connection with the Facility Improvement Project and the Equipment Project.

(e) The Agency and the Company acknowledge and agree that the Facility Improvement Materials to be acquired and installed by the Developer at the Project Premises and the nature thereof, all as comprising the Facility Improvement Project, may change from time to time over the term of this Agreement to reflect amendments, modifications, replacements, accessions to and supplements made to the Facility Improvement Project.

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

(g) Upon written request, the Company will extend to the Agency, the benefit of all

vendors' warranties received by the Company (to the extent the Company is permitted under the terms of such warranties to assign them, but retain the ability to enforce such warranties in the Company's own name) in connection with the Facility Equipment, including any warranties given by the vendors or manufacturers of the Facility Equipment.

(h) Subject to the provisions of the Prime Lease, the Company shall take or cause the Developer to take such action and institute such proceedings as shall be reasonably necessary to cause all contractors and material suppliers to complete their contracts in accordance with the terms of said contracts. The Agency will cooperate in any such action or proceeding, at the Company's sole cost and expense, provided that the Agency shall not be required to take any action it does not deem to be reasonable. Any amounts recovered by way of damages, refunds, credits, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, shall be paid to the Company or the Developer pursuant to the provisions of the Prime Lease.

(i) Concurrently with the execution of this Agreement, the Company will surrender the Second Preliminary Sales Tax Letter to the Agency for cancellation, and the Agency shall make available to the Company the Sales Tax Letter (Company) in the form of Appendix C hereto.

(j) Concurrently with the execution of this Agreement, the Company will surrender or will cause the Developer to surrender the First Preliminary Sales Tax Letter to the Agency for cancellation and the Agency shall make available to the Developer the Sales Tax Letter (Developer) in the form of Appendix D hereto.

(k) The Company and the Agency agree that title to equipment, machinery and other property intended to be incorporated or installed as part of the Project Property (excluding Company Property) shall vest in the Agency immediately upon the execution by the Company as agent for the Agency of a contract, bill, invoice or purchase order therefor. The Company shall take all action reasonably necessary to protect such interest of the Agency against claims of any third parties.

(l) The Company covenants that Prime Lease requires that Developer design the Project in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality, and further covenants that its operation of the Project will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(m) Except as provided in Section 9.2 hereof, the Company covenants that no Person other than the Company and any of its Affiliates will use or operate any of the Project Property.

(n) Within sixty (60) days after Construction Complete Date, the Company shall deliver or cause the Developer to deliver a Construction Completion Certificate in the form attached hereto as Schedule G.

Section 2.2. Commitment to Project. The Company unconditionally covenants and agrees that it will cause the Developer to proceed with the Facility Improvement Project and the Company will proceed with the Facility Equipment Project, all on behalf of and as agent for the Agency, and all in accordance with this Agreement and the Project Documents.

Section 2.3. No Title Assurance by Agency. The Agency makes no representation or warranty that the Agency has been vested with a valid fee interest in the Agency Owned Facility

Realty or the Facility Equipment or a valid leasehold interest in the Project Premises or the Developer Owned Facility Realty for purposes of this Agreement, the Developer Project Documents or the Company Project Documents, nor shall the Agency have any liability (pecuniary or otherwise) by reason of any such failure of interest.

Section 2.4. Title Insurance. On the Lease Commencement Date, the Company will obtain title insurance policies in an amount not less than $500,000 insuring the Agency's title to the Agency Owned Facility Realty against loss as a result of defects in the title of the Agency. Any proceeds of such fee and leasehold title insurance policies shall be applied to remedy the defect in title, or, if not so capable of being applied, or if amounts remain, shall be paid over to the Company. Upon the acquisition by the Agency of title to any Additional Agency Owned Unit as provided in Section 6.19 hereof, the Company shall deliver or cause to be delivered to the Agency endorsements to the fee title insurance policy (or new fee title insurance policies) indicating the fee title of the Agency in the Additional Agency Owned Units.

Section 2.5. Sales Tax Exemption Procedures. (a) After the Lease Commencement Date, the Company shall proceed on behalf of and as agent for the Agency with the acquisition of the Facility Equipment for use at the Project Premises, all to constitute part of the Equipment Project. The Agency and the Company acknowledge and agree that the Facility Equipment is to be acquired for use solely at the Project Premises, and that the nature of the Project Property may change from time to time over the term of this Agreement to reflect amendments, modifications, replacements, accessions to and supplements made thereto.

At the request of the Agency, the Company shall provide such additional information and clarifications concerning any item of Facility Equipment as shall be reasonably requested by the Agency.

All items of Facility Equipment shall be enumerated in sufficient detail for accurate identification (as to date of payment, as applicable, vendor, location, physical description, serial number (if applicable and to the extent available), price and the amount of Sales Tax Savings (Company) in connection therewith) in the Property Registry (Facility Equipment) as provided in Section 6.13 hereof.

(b) The Company, as agent for the Agency, may enter into any contracts, invoices, bills or purchase orders, while the Sales Tax Letter (Company) is in effect, for the exclusive use by the Company solely at the Project Premises in furtherance of the Company Business provided, that in each such contract, invoice, bill or purchase order:

(i) the vendor or contractor thereunder represents to the Agency that it is not a Prohibited Person,

(ii) such contract, invoice, bill or purchase order shall recite that it is non-recourse to the Agency, and that the Agency shall have no liability for pecuniary damages or specific performance or otherwise thereunder,

(iii) such contract, invoice, bill or purchase order shall recite that it is assignable at the option of the Agency (without the consent of the vendor or the Company or either of them), to whom the Agency may transfer its interest in such contract, invoice, bill or

purchase order under this Agreement (which option the Agency shall exercise only upon the termination of this Agreement), and

(iv) such contract, invoice, bill or purchase shall contain such other reasonable terms as the Agency may reasonably request in order to ensure compliance with this Agreement, with the Sales Tax Letter (Company) and with the Act.

(c) The Company covenants and agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the Equipment Project shall include the following language (the "Requisite Contract Language") through an attached rider, by incorporation, by reference or otherwise, in substantially the below form provided, however, that, to the extent that the preparation of any bill or invoice shall not be within the reasonable control of the Company, the Company shall use its reasonable good faith efforts (including, at a minimum, provision of the Requisite Contract Language to the Vendor) to cause the inclusion therein of the Requisite Contract Language):

> "This [contract, agreement, invoice, bill or purchase order] is being entered into by [Federal Express Corporation], a corporation organized under the laws of the State of Delaware (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 from time to time of machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property for use at a certain leasehold premises consisting of portions of the cellar, the first and second floors containing an aggregate of approximately 202,033 square feet of space in portions of the cellar, first and second floors that building known as 621 West 48th Street, New York, New York, by the Agent, as such capitalized terms are defined in the attached Letter of Authorization for Sales Tax Exemption. The machinery, equipment, trade fixtures, furniture, furnishings and other tangible 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 Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. 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 Company shall fail to include, incorporate by reference or otherwise cause the above language to be included in substantially the above form in any such contract, agreement, invoice, bill or purchase order, 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 Sales Tax Savings (Company) able to

be conferred by the Agency, and the Company shall not claim any Sales Tax Savings (Company) with respect to any such contract, agreement, invoice, bill or purchase order and the Company shall promptly deliver notice of same to the Agency and, if such failure shall be capable of being cured, cure such failure within thirty (30) days of delivery of such notice. If such failure shall not be capable of being cured, or if so capable and the Company shall fail to cure such failure within such thirty (30) day period, the Company shall, upon demand by the Agency, pay the Sales Tax Penalty Amount.

(d) Subject to this Section 2.5 hereof, the Agency shall on, the Lease Commencement Date, make available to the Company and the Developer the Sales Tax Letter (Company) and the Sales Tax Letter (Developer), in substantially the forms appended hereto as Appendix C and Appendix D, respectively. The Sales Tax Letters and any amendments or replacements thereof shall be subject to confirmation pursuant to Exhibit B of the respective Sales Tax Letters. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letters) as may be reasonably necessary to permit the Company or the Developer, as the case may be, to obtain the intended benefits thereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the Sales Tax Savings received by the Company or the Developer for the benefit of the Company pursuant to the Sales Tax Letters shall not exceed the Maximum Sales Tax Savings Amount (Company) and the Maximum Sales Tax Savings Amount (Developer), respectively:

(i)(a) The Sales Tax Letter (Company) shall be dated the Lease Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (a) the termination of this Agreement, (b) the Project Termination Date, (c) the date upon which the Company has realized the Maximum Sales Tax Savings Amount (Company) or (d) the earlier termination of the Sales Tax Letter (Company) pursuant to the terms thereof or Section 7.2 hereof; subject, however, to confirmation by the Agency as provided below.

(i)(b) The Sales Tax Letter (Developer) shall be dated the Lease Commencement Date and shall be effective for a term commencing on its date and expiring on the earliest of (a) the termination of this Agreement, (b) the Construction Completion Date, (c) the date upon which the Developer has realized the Maximum Sales Tax Savings Amount (Developer) or (d) the earlier termination of the Sales Tax Letter (Developer) pursuant to the terms thereof or pursuant to the Developer Sublease.

Within ten (10) Business Days after the Company shall surrender the Sales Tax Letter (Company) to the Agency for confirmation thereof by the Agency on the commencement date of the next scheduled Effective Period as set forth in Exhibit B to the Sales Tax Letter (Company), the Agency shall provide such confirmation of the Sales Tax Letter (Company) unless:

A. the Agency shall no longer have an interest in the Project Premises, the Overlease, or the Company Lease, or the Prime Lease, the Overlease or the Company Lease shall have terminated, in either of which events the Sales Tax Letter (Company) shall no longer be available for Facility Equipment and the Sales Tax Letter (Company) shall be terminated and surrendered for cancellation,

B. the Agency shall no longer have title to or a leasehold interest in any property constituting Facility Equipment, in which event the Sales Tax Letter (Company) shall be terminated and surrendered for cancellation,

C. the Company shall be in default of any obligation under this Agreement, which default shall not have been cured within thirty (30) days after the delivery by the Agency to the Company of notice of such default; provided, however, that if such default cannot be cured within thirty (30) days but is reasonably expected by the Company to be cured within sixty (60) days and if the Company shall be continually diligently seeking to cure such default, the Company shall have sixty (60) days after the delivery by the Agency to the Company of notice of such default to cure such default, or

D. the Company shall be required to surrender the Sales Tax Letter (Company) pursuant to Section 7.2 hereof; or

E. this Agreement shall have terminated;

provided, however, if the Company shall dispute in good faith the occurrence of any of the events described in clause (C) above, and no Event of Default shall exist under this Agreement, the Agency shall continue to provide such annual confirmation of the Sales Tax Letter (Company) until the resolution of such dispute, but only if the Company shall proceed with due diligence in good faith to resolve such dispute and shall deposit in escrow in an interest-bearing account with an escrow agent acceptable to the Agency an amount equal to all such Sales Tax Savings (Company) thereafter received by the Company promptly after the receipt thereof until the earlier of the resolution of such dispute (upon which resolution such escrow agent shall pay over such amounts to the Agency or the Company, as applicable) or the termination of this Agreement (upon which termination, if such dispute shall not have been resolved, such escrow shall be held by such escrow agent until resolution of the dispute).

(ii) The authorizations set forth in the Sales Tax Letter (Company) shall automatically be suspended after notice to the Company that any of the events described in clauses (A) through (E), inclusive, of Section 6.1(d)(i) hereof shall exist which, in the case of Section 6.1(d)(i)(C) above, shall not have been cured within the periods referred to therein, unless (1) the Company shall pay any amounts due or otherwise cure such defaults with respect to the events described in such clause (i)(C) above, or (2) the Company shall comply with the escrow provisions of Section 6.1(d)(i) above.

(iii) The Sales Tax Savings (Company) to be provided pursuant to the Sales Tax Letter (Company)

A. shall not be available for payment of any costs or items other than Facility Equipment which are identified with reasonable specificity in the Project Registry (Facility Equipment) delivered to Agency on the Lease Commencement Date and thereafter on each August 1 next succeeding the end of the immediately preceding Reporting Period in which such item of Sales Tax Savings (Company) shall have been received,

B. shall only be utilized for Facility Equipment which shall be purchased and installed for use only by the Company or any Affiliate at the Project Premises, in furtherance of the Company Business until the Maximum Sales Tax Amount (Company) is realized (and not with any intention to sell, transfer or otherwise dispose of any such Facility Equipment to another Person), it being the intention of the Agency and the Company that the Sales Tax Savings (Company) shall not be made available with respect to any item of Facility Equipment unless such item is used solely by the Company or its Affiliate at the Project Premises in connection with the Company Business,

C shall not be available for any item of (i) rolling stock, (ii) office supplies, (iii) artwork, (iv) plants, (v) labor, installation or freight costs, (vi) design fee or interior office design fee, or (vii) computer software unless the computer software is a capital asset or capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure,

D. shall not be available for any date subsequent to which the Sales Tax Letter (Company) shall not have been annually reconfirmed for reasons permitted in Section 6.1(d)(i) hereof (except as provided in the proviso to Section 6.1(d)(i) hereof) or shall have been suspended as provided in Section 6.1(d)(ii) hereof; provided, however, that in the event the Company shall thereafter pay any amounts due and cure any defaults with respect to the events described in clause (i)(C) of Section 6.1(d) hereof, or the Company shall establish and confirm the escrow deposits referred to in Section 6.1(d)(i) hereof, or the Agency shall thereafter provide such annual confirmation of the Sales Tax Letter (Company) or waive such suspension, as applicable, the Sales Tax Savings (Company) shall again continue from the date of such annual confirmation of the Sales Tax Letter (Company) or such waiver,

E. shall not be available for or with respect to any tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Company as agent for the Agency for use in the Company Business by the Company or an Affiliate at the Project Premises,

F. shall not be available for any cost of utilities, cleaning service or supplies,

G. shall not be available subsequent to the termination of this Agreement, and

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

(iv) In the event that the Company shall utilize the Sales Tax Savings (Company) authorization provided pursuant to the Sales Tax Letter (Company) in violation of the provisions of Section 6.1(d)(iii) hereof or the Sales Tax Letter (Company), the Company shall promptly deliver notice of same to the Agency, and, if such violation shall be capable of being cured, cure such violation within thirty (30) days of delivery of such notice. If such violation shall not be capable of being cured, or if so capable and the Company shall fail to

cure such violation within such thirty (30) day period, the Company shall, upon demand pay the Sales Tax Penalty Amount.

(v) The Company shall,

A. on the Lease Commencement Date, on August 1, 2003, and on each August 1 thereafter and ending on the Project Termination Date, deliver to the Agency an Annual Certificate of the Company in the form of Schedule A to this Agreement, and

B. on August 1, 2003, on every third August 1 thereafter, until the Company has realized the Maximum Sales Tax Savings (Company) and on the August 1 as shall immediately follow the Fiscal Year in which this Agreement is terminated if the Company has not realized the Maximum Sales Tax Savings (Company) prior to the delivery of the most recent Annual Certificate, and, if the Agency shall otherwise have a good faith reason to believe that the information and certifications delivered to the Agency with respect to Sales Tax Savings (Company) and Sales Tax Savings (Developer) are inaccurate, false or misleading in any material respect, upon written notice by the Agency to the Company, the Company shall deliver to the Agency an opinion of an Independent Accountant in the forms attached hereto as Schedule B-1 and Schedule B-2 to the effect that such Independent Accountant has audited the use by the Company and/or the Developer of the Company Sales Tax Letters or Developer Sales Tax Letters, as the case may be, for the period so requested by the Agency, and has audited the terms and provisions of the Company Sales Tax Letters, Developer Sales Tax Letters and of this Section 2.5, and has further audited the certificate of the Company provided in paragraph (A) above or the certificate of the Developer provided pursuant to Section 6.9 of the Developer Sublease, and such certificates were properly prepared and accurately reflect the matters certified therein. In the event that the Agency has so requested an audit of the use of the Company Sales Tax Letters in accordance with the terms thereof and this Agreement, the Company shall not be required to deliver another Report of Independent Accountant (Company) (in the form of Schedule B-1 attached hereto) until two (2) years after the previous Report of Independent Accountant (Company) was delivered, provided that this Agreement shall be in effect at the end of such two-year period.

(vi) In the event that the Company shall deliver to the Agency any of the certifications required in Section 6.1(d)(v)(A) above with incorrect information, notwithstanding the Company's good faith efforts to supply accurate and complete information with respect to such certification, and either (x) the Company on its own initiative discovers such error and promptly communicates the existence thereof to the Agency, or (y) the Agency becomes aware of the existence of such error and communicates the existence thereof to the Company, the same shall not constitute a default hereunder if, in either case, (1) the Company corrects such error and supplies to the Agency correct information with respect thereto (in the form of an amended certification or otherwise as requested by the Agency), within thirty (30) days of the Company's discovery thereof or of the Agency's discovery and notification to the Company thereof, as the case may be, and (2) the Company within such thirty (30) day period promptly pay the Sales Tax Penalty Amount.

(vii) In the event that the Company shall fail to satisfy the condition specified in Section 6.1(d)(iii)(C) hereof, the authorizations set forth in the Sales Tax Letter (Company) and/or Sales Tax Letter (Developer), as the case may be, shall be suspended until such date as the Company shall (x) pay the Sales Tax Penalty Amount and (y) deliver to the Agency a certificate of an Authorized Representative of the Company (or the Developer, as the case may be) itemizing each such Sales Tax Savings availed of, its dollar amount and its date, and certifying such itemization as a true, correct and complete statement of each such Sales Tax Saving availed of by a Company or the Developer pursuant to the authorizations set forth in the Sales Tax Letters.

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

(ix) Any amount (excluding any interest or other Government Penalty Amount) paid to the Tax Collecting Entity or the Agency as a return of Sales Tax Savings in accordance with this Agreement shall, (i) if so paid by reason of a good faith error, in the reasonable judgment of the Agency, on the part of the Company and/or the Developer in their use of the Sales Tax Letters, constitute a credit to the Sales Tax Savings that are to be made available to either the Company or the Developer (as the case may be) under the Sales Tax Letters, but only to the extent that, with respect to the Company, the aggregate of such amounts shall not exceed $150,000, and with respect to the Developer, the aggregate of such amounts shall not exceed $150,000, or (ii) if so paid not by reason of such good faith error, not constitute a credit to the Sales Tax Savings that are to be made available to either the Company or the Developer.

ARTICLE III
Lease of Project Property

Section 3.1. Lease of the Project Property.

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

(b) Facility Equipment. The Agency hereby leases to the Company and the Company hereby leases from the Agency the Facility Equipment all for and during the term herein provided upon and subject to the terms and conditions herein set forth. The Company shall, subject to the provisions of this Agreement, at all times during the Term of this Agreement use and operate the Facility Equipment as a qualified "project" in accordance with the provisions of the Act and for the operation of the Company Business. The Company shall not use or operate the Facility Equipment or allow the Facility Equipment or any part thereof to be used or operated for any unlawful purpose or in a manner which may constitute a nuisance, public or private, or make void or voidable any insurance required hereunder then in force with respect thereto.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Lease Commencement Date and shall expire on the earlier of (i) such date as this Agreement shall expire or may be terminated as herein provided, or (ii) the earliest to occur of (A) Project Termination Date; (B) the expiration or earlier termination of the Prime Lease or the Company Lease; (C) the assignment by the Company of its interest in the Prime Lease (other than pursuant to Sections 6.1, 6.20 or 9.2 hereof) to a Person as shall not constitute an Affiliate.

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

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

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

stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4. Obligation of the Company Unconditional. The obligations of the Company to pay the amounts due pursuant to Sections 3.3 and 7.2 hereunder and the obligations of the Company to pay all other payments provided for in this Agreement and to maintain the Project Property in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person whatsoever. For so long as this Agreement remains in effect, the Company will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Company under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

ARTICLE IV
Maintenance, Taxes and Insurance

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

(b) The Company shall have the right to make such alterations or to furnish any utilities or services for the Project Premises to make such replacements, or repairs of, or additions to, the Project Property or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) the continuity of the operation of the Company Business by the Company and its Affiliates at the Project Premises is not materially impaired for longer than reasonably necessary, (ii) such additions, alterations, replacements or repairs are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements (as defined in Section 4.6 hereof), (iii) such additions, alterations, replacements or repairs are promptly and fully paid for by the Company (or the Developer) in accordance with the Prime Lease and the terms of the applicable contract(s) therefor, and in order that the Project Property shall at all times be free of any mortgage, lien, charge, encumbrances, security interest or claim other than Permitted Encumbrances, (iv) title thereto or a leasehold interest therein shall be deemed to be vested in the Agency, and (v) such additions, alterations, replacements or repairs do not change the nature of the Project Property so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act for use for the general purposes specified in the recitals to this Agreement. All alterations of, substitutions for, replacements of and additions to the Project Property shall be deemed to constitute a part of the Project Property, subject to this Agreement, and title to, or leasehold interest in, such property shall automatically vest in the Agency free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances immediately upon installation or incorporation in the Project Premises or payment therefor, whichever shall first occur. The Company or its insurer shall have the right to direct the defense of the Agency pursuant to this Section 6.2 and the Agency shall not compromise any claim without the prior consent of the Company, or if defended by the insurer, the prior consent of the insurer, provided that no settlement or compromise is otherwise prejudicial to the Agency.

(c) The Company shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed, at the Project Premises, machinery,

equipment including without limitation, telecommunications equipment, data processing equipment and trade fixtures (collectively the "Company Property"), with respect to which no sales or use tax exemption shall have been received pursuant to the Company Sales Tax Letters, without conveying title to or any leasehold interest in such property to the Agency nor subjecting such property to this Agreement. The Agency shall not be responsible for any loss of or damage to the Company Property. Each of the Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company Property.

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

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

Section 4.2. Removal of Facility Equipment. (a) The Company hereby represents, warrants and covenants to and with the Agency that none of the Facility Equipment will ever be acquired for any purpose other than for installation and use at the Project Premises for use in the Company Business nor, except as permitted below in this Section 4.2, will any of the Facility Equipment ever be removed from the Project Premises (either on a temporary or permanent basis) prior to the expiration of one (1) year with respect to computer software, computer or telecommunications equipment and with respect to all other Facility Equipment seven (7) years after the installation or location of such respective item of Facility Equipment at the Project Premises (the "Facility Equipment Retention Period") unless simultaneously with such removal either (i) an amount equal to the Sales and Uses Taxes that would have been payable at the original time of such purchase with respect to the purchase of such item (but based upon its fair market value at the time of its removal), but for the Company Sales Tax Letters, shall be paid by the Company to the Tax Collecting Entity with respect to the item or items being removed; or (ii) unless the provisions of Section 4.2(b) or (c) below shall apply and have been complied with by the Company, there shall be delivered to the Agency a certificate of an Authorized Representative of the Company stating that (x) such item of the Facility Equipment is obsolete or unsuitable to the Company for the purpose for which it was originally intended, or (y) the Company has a good faith operational or business reason for such removal in relation to the conduct of the Company Business (in which event the provisions of Sections 4.2(b) and (c) below shall be inapplicable). An item of Facility Equipment shall be deemed "obsolete" if the Company has developed an alternative method for performing the same function in a different manner. After the expiration of the Facility Equipment Retention Period, the Company may remove, transfer, sell or dispose of any Facility Equipment from the Project Premises. In no event, however, will the Company cause the removal, transfer, sale or disposition of Facility Equipment from the Project Premises such that the original cost of the remaining Facility Equipment constituting the Project Property shall be less than $250,000.

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

(i) the Project Premises ceases to be the "permanent location" to which the item of Facility Equipment is to be returned after its temporary off-location use or repair,

(ii) the Temporary Removal is not effected for a good faith business purpose consistent with the Company Business conducted by the Company and its Affiliates at the Project Premises, and

(iii) the item of Project Property is to be absent from the Project Premises for a period in excess of ninety (90) days, subject, however, to any delays as a result of Force Majeure and in the event of emergencies or repairs.

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

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

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

(ii) if the Company shall seek to effect a Permanent Removal of Project Property for reasons other than as permitted in Section 4.2(c)(i) above, and such Permanent Removal is effected in accordance with a good faith business purpose on the part of the Company and not as part of any systematic or programmatic transfer of Project Property from the Project Premises, the Company may on an occasional and immaterial basis effect such Permanent Removal; provided, that prior to any such Permanent Removal the Company shall deliver (y) to the Agency, a certificate of an Authorized Representative of the Company confirming that such Permanent Removal is being effected in a manner and for a purpose consistent with the conditions permitting such Permanent Removal as provided above in this Section 4.2(c)(ii)

and not in violation of any other covenant, condition or agreement on the part of the Company hereunder, and (z) to the Tax Collecting Entity an amount, certified as correct by an Authorized Representative of the Company, of the Sales and Uses Taxes that would have been payable at the time of original purchase based upon the fair market value of such Project Property at the time of its removal (but only to the extent, if any, that the aggregate value of Project Property removed pursuant to Permanent Removals during the same calendar year shall exceed $250,000.

(d) Notwithstanding the foregoing,

(i) the Company shall not effect Temporary Removals or Permanent Removals of Project Property from the Project Premises if any such removal would change the nature of the Project Property as a commercial facility and as a qualified "project" as defined in and as contemplated by the Act, and

(ii) the title to each item of Project Property shall be deemed automatically conveyed by the Agency to the Company, and such item of property shall no longer constitute Project Property, on the earliest of (x) the date upon which such item shall have been removed from the Project Premises in compliance with the terms of this Agreement, (y) the day following the third anniversary of that date upon which the item of Facility Equipment shall have been paid for or installed at the Project Premises (or the first anniversary with respect to Facility Equipment constituting computer software, computer or telecommunications equipment), or (z) that day upon which the item of Facility Equipment shall have been removed from the Project Premises in violation of the provisions of this Section 4.2 (and in which latter event, the Company shall be obligated to make payments to the Agency as provided herein); provided, however, no such automatic conveyance shall be deemed to have occurred if such conveyance would cause the Company to be in violation of the provisions of the last sentence of Section 4.2(a) hereof. Any Facility Equipment conveyed or deemed conveyed to the Company shall not be subject to the restrictions hereunder from and after the date of reconveyance from the Agency to the Company.

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

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

Section 4.3. Taxes, Assessments and Charges.

(a) *Taxes, Assessments and Charges on the Project Premises.* The Company shall pay or cause to be paid by the Developer or its successors and assigns, pursuant to the provisions of the Prime Lease, when the same shall become due all taxes (other than those types of real estate taxes in substitution for which the Company shall have made PILOT Payments pursuant to the PILOT Agreement) and assessments, general and specific, if any, levied and assessed upon or against the Agency Owned Facility Realty, this Agreement, any estate or interest of the Agency or the Company in the Agency Owned Facility Realty, the Overlease Agreement or any estate or interest of the Agency or the Developer in the Agency Owned Facility Realty, or the

rentals or other payments hereunder or under the PILOT Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments, Business Improvement District charges (if any) 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 Agency Owned Facility Realty, all of which are herein called "Impositions"; provided, however, that:

(i) the obligation of the Company to pay those Impositions as shall arise with respect to the Agency Owned Facility Realty shall be limited to the extent of the obligation of the Company under the Prime Lease to pay the same, if any, it being expressly understood that the Company shall not be in default under this Agreement with respect to an Imposition, if the Company is not in default with respect thereto under the Prime Lease; and

(ii) the obligation of the Company to pay those Impositions as shall arise with respect to (x) the Overlease Agreement or any estate or interest of the Agency or the Developer in the Agency Owned Facility Realty, (y) the interest of the Agency in this Agreement or the PILOT Agreement, or (z) the amounts payable hereunder or under the PILOT Agreement, shall not be limited by any present or future provision under the Prime Lease or any other agreement.

The Agency shall promptly forward to the Company any notice, bill or other statement received by the Agency concerning any Imposition. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

The Company acknowledges that the provisions of Section 412-a of the Real Property Tax Law of the State of New York and Section 874 of the General Municipal Law of the State of New York do not entitle the Agency to exemption from water and sewer charges, special assessments and special *ad valorem* levies.

It is further acknowledged and agreed by the Agency and the Company that, as between the Agency and the Company, the Company shall have the obligation to pay any and all Impositions.

It is the intention of the Agency and the Company that the Agency Owned Facility Realty not be exempt from Impositions by reason of the Agency's ownership or leasehold interest therein.

The Company may, at its sole cost and expense and in good faith, commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any such Imposition (upon prior written notice to the Agency, if the interest of the Agency is subject to such Imposition); *provided* that (i) if the Company withholds payment, such proceeding shall suspend the execution or enforcement of any lien arising from the non-payment of such Imposition against the Agency Owned Facility Realty or any part thereof or any interest therein or in this Agreement or the PILOT Agreement of the Agency, the Company or against any of the rentals or other amounts payable under this Agreement, or the PILOT Agreement or, if such action does not stay the enforcement of such lien, the Company either obtains such a stay, or otherwise discharges such lien prior to the time that the Agency is foreclosed upon and defeased of its estate in the Agency Owned Facility Realty; and (ii) such contest shall not result in the Agency being in any reasonable danger of any criminal liability for failure to comply therewith; *provided, however,* if such contest could result in the Agency being in any reasonable danger for civil liability (including accrual of interest, fines

and/or penalties), (y) the Company shall deliver a written confirmation to the Agency that the Company shall indemnify and hold the Agency harmless for any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Company shall deliver a certificate of an Authorized Representative of the Company to the Agency to the effect that the Company meet a minimum net worth of $200,000,000, or, if such is not the case, the Company shall provide to the Agency such security as the Agency may reasonably require.

(b) *Taxes, Assessments and Charges on Facility Equipment*. The Company shall pay or cause to be paid when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility Equipment or any part thereof, this Agreement, any estate or interest of the Agency or the Company in the Facility Equipment, or the rentals or other payments hereunder during the term of this Agreement, and all 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 use, operation, maintenance or upkeep of the Facility Equipment, all of which are herein called "Facility Equipment Impositions". The Agency shall have no responsibility for the payment of any Facility Equipment Impositions. The Company may pay or cause to be paid any Facility Equipment Impositions in installments if so payable by law, whether or not interest accrues on the unpaid balance.

The Company may at its sole cost and expense and in good faith commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any such Imposition (upon prior written notice to the Agency, if the interest of the Agency is subject to such Imposition), *provided* that, (i) if the Company withholds payment, such proceeding shall suspend the execution or enforcement of any lien arising from the non-payment of such Facility Equipment Impositions or any part thereof or any interest therein or in this Agreement of the Agency or the Company or against any of the rentals or other amounts payable under this Agreement or if such action does not stay the enforcement of such lien, the Company either obtains such a stay, or otherwise discharges such lien prior to the time that the Agency is foreclosed upon and defeased of its estate in the Facility Equipment, or the Company determines that such action is not worth maintaining and such property is foreclosed upon with the prior knowledge, (ii) such contest shall not result in the Agency being in any reasonable danger of any criminal liability for failure to comply therewith; *provided, however,* if such contest could result in the Agency being in any reasonable danger for civil liability (including accrual of interest, fines and/or penalties), (y) the Company shall deliver a written confirmation to the Agency that the Company shall indemnify and hold the Agency harmless for any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Company shall deliver a certificate of an Authorized Representative of the Company to the Agency to the effect that the Company meets a minimum net worth of $200,000,000, or, if such is to the case, the Company shall provide to the Agency such security as the Agency may reasonably require.

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

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Company and the

Agency in a minimum amount of $15,000,000 aggregate coverage for personal injury and property damage which policy or policies may be included under any Comprehensive General Liability Policy of the Company;

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

(iii) Property insurance insuring the systems, machinery, equipment, facilities, fixtures and other property constituting a part of the Project Property against loss or damage to the Project Property by fire, lightning, vandalism, and malicious mischief and with broad form coverage to include fire, lightning, vandalism and malicious mischief and with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Company, the Developer or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Project Property; any such insurance shall not contain any provisions for a deductible or retention amount in excess of $50,000, except for any deductible for Facility Equipment;

(iv) Commercial General liability insurance in accordance with customary insurance practices for similar operations with respect to the Project Property and the business thereby conducted in a minimum amount of $15,000,000 which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof (other than under Section 6.2(c) hereof to the extent not commercially reasonably available to the Company at no material increase in premium, and (B) may be effected under overall blanket or excess coverage policies of the Company, any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company but if the net worth of the Company shall be less than $200,000,000 then such deductible shall not exceed $50,000; notwithstanding the foregoing, the Company shall have no obligation to obtain environmental indemnity insurance in favor of the Agency so long as the Company maintains a net worth in excess of $200 million. In the event the Company's net worth is less than that amount, it will provide such coverage, only to the extent it is commercially reasonably available at no material increase in premium.

(v) Workers' compensation insurance, disability benefits insurance and such

other forms of insurance which the Company, or the Agency are required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company. The Company shall require that all its contractors and subcontractors shall maintain all forms or types of insurance with respect to their respective employees required by law; and

(vi) Such other customary insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require provided such coverage is reasonably available to the Company at commercially reasonable rates and is coverage that is customarily obtained by facilities similarly situated to the Project; and

(b) All insurance required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "XIII/A" or better by A.M. Best & Co., or (ii) reasonably approved by the Agency.

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

(i) designate the Company or the Developer in the case of clauses (a)(i), (ii) and (iii) above as the named insured and (except in the case of workers' compensation insurance) designate under the Comprehensive General Liability Policy, the Agency as an additional insured and with respect to Property Insurance designate the Agency as a loss payee as its interest may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the Project Property be endorsed and made payable to the Company;

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

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

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

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or

expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration or change;

(vii) waive any right of subrogation of the insurers thereunder against the Agency to the extent that the Company has waived claims against the Agency (as provided in subsection (i) below) and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Agency; and

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

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project Property shall be paid to the Developer or to the Company, as required by the Prime Lease, and applied in accordance with the provisions of the Prime Lease and Section 5.1 hereof.

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

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

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTERESTS OF THE COMPANY OR ANY OTHER PERSONS.

(h) The Company shall comply with the reporting provisions with respect to each insurance policy maintained hereunder. Except for workers compensation claims, the Company will give notice to the Agency for any claim, accident or loss reportable to the insurer that will exceed the policy's deductible limits.

(i) The Company, its successors and assigns, waive any and all claims against the Agency, to the extent such claims are covered by insurance herein. This waiver is in addition to the protections afforded the Agency pursuant to Section 6.2 hereof, and is not intended to limit or disminish the indemnities afforded the Agency thereunder in any manner whatsoever.

Section 4.5. Advances by Agency. In the event the Company fails to make any payment or fails to perform or observe any obligation required of it under this Agreement, the Agency, after first delivering ten (10) days' prior written notice to the Company of any such failure on its part (except in the event of an emergency condition which, in the reasonable judgment of the Agency, necessitates immediate action) may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum from the date advanced, shall be paid by the Company promptly upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.6. Compliance with Law. (a) The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, and subject to the provisions of Section 4.6(b) below, use and operate the Project Property (or promptly use good faith diligent efforts to cause all of their subtenants, users and operators to use and operate the Project Property in all material respects in compliance with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, whether ordinary or extraordinary (the "Legal Requirements"). Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Developer with any Legal Requirement: (i) if the Company has no right under the Prime Lease to compel the Developer to comply or cause compliance with such Legal Requirement; (ii) if the Developer is required, or the Company reasonably believes the Developer is required, under the terms of the Prime Lease to comply with such Legal Requirement, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (iii) if such non-compliance is the result of any action or failure to act on the part of the Developer (which action or failure to act is not a breach of any obligation of the Developer to the Company under the Prime Lease) or of any tenant (other than the Company, or any Affiliate thereof or a tenant, directly or indirectly, of the Company, or any Affiliate thereof) in any portion of the Project Premises or of any agent, contractor, officer, director, employee or servant of the Developer or of any such tenant.

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

(c) In the event the Company shall receive notice of non-compliance with any Legal

Requirement, the Company shall promptly deliver written notice of such non-compliance to the Agency accompanied with a statement of the action intended to be taken by the Company or the Developer with respect thereto.

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

(e) Notwithstanding the foregoing, the Company shall not be responsible for the contesting by the Developer of any Legal Requirement: (i) if the Company has no right under the Prime Lease to compel the Developer to comply or cause the Developer to conduct the contest with such Legal Requirement; (ii) if the Developer is required, or the Company reasonably believes the Developer is permitted, under the terms of the Prime Lease to contest such Legal Requirement, so long as the Company is exercising good faith diligent efforts to enforce such rights; or (iii) if such contest is the result of any action or failure to act on the part of the Developer (which action or failure to act is not a breach of any obligation of the Developer to the Company under the Prime Lease) or of any tenant (other than the Company, or any Affiliate thereof or a tenant, directly or indirectly, of the Company, or any Affiliate thereof) in any portion of the Project Premises (Facility Improvements) or of any agent, contractor, officer, director, employee or servant of the Developer or of any such tenant.

ARTICLE V
Damage, Destruction and Condemnation

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

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

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

(iii) the Company will promptly give written notice of such Loss Event in excess of $500,000 to the Agency, generally describing the nature and extent thereof; and

(iv) the Company shall deliver prompt written notice to the Agency as to whether the Company and/or the Developer intends to rebuild, replace, repair or restore, or cause such rebuilding, replacement, repair or restoration of, such Project Property and whether the Company intends to continue its occupancy or abandon such Project Property, in which latter event the Agency shall convey to the Developer all of the Agency's right, title and interest in the portion of the Project Premises constituting Agency Owned Facility Realty as provided in Section 6.18 hereof. During the period between the occurrence of the Loss Event and the date upon which the Company shall deliver the above-stated written notice to the Agency, and in order to minimize any risks of harm to person or property, the Company shall cause the damaged or destroyed portion of the Project Premises to remain vacant and unoccupied, unless pursuant to the relevant Legal Requirements and the terms of the Prime Lease, the Company may partially occupy such portion.

(b) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom with respect to the Project Property shall be applied as provided in the Prime Lease, and if not applicable, paid to the Company or the Developer, and in the event the Company or the Developer, as applicable, elects to restore all or any part of the Project Property, the Company (except to the extent provided in Section 5.1(e) hereof), shall at its own cost and expense (except to the extent paid from the Net Proceeds), either

(y) cause (1) the portion of the Project Premises constituting Agency Owned Facility Realty and related Facility Improvements as shall be the subject of the Loss Event or portions thereof not to be rebuilt, replaced, repaired or restored as provided in clause (z) below) to revert to the Developer by terminating this Agreement with respect to such Agency Owned Facility Realty and thereby causing such reversion, and (2) the portion, if any, of the Project Premises constituting Developer Owned Leased Premises and related Facility Improvements as shall be the subject of the Loss Event (or so much of such premises not to be rebuilt, replaced,

repaired or restored as provided in clause (z) below) to cease to be leased to the Agency pursuant to the Company Lease, or

(z) promptly and diligently replace, repair or restore the affected Project Premises and related Facility Improvements to their condition immediately prior to the Loss Event, or to a safe and lawful condition, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Company or the Developer, as applicable, shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the rent or other amounts payable by the Company under this Agreement, the PILOT Agreement or any other Project Document be abated, postponed or reduced.

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

(i) automatically be deemed a part of the Project Property and owned by, or leased to, the Agency and be subject to the Prime Lease, the Company Lease and this Agreement and in the case of a portion of the Project Premises constituting Agency Owned Facility Realty be subject to the Overlease Agreement and the PILOT Agreement,

(ii) be effected under the Agency's ownership and the provisions of this Agreement and such rebuilding, replacement, repair or restoration shall not change the nature of the Project Premises as a qualified "project" as defined in the Act,

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

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

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

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

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

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

(i) The Agency agrees that it will not submit a claim for compensation in the event of a condemnation of all or part of the Agency Owned Facility Realty or the Facility Equipment.

Section 5.2. Damage, Destruction and Condemnation of the Facility Equipment. (a) In the event that at any time during the term of this Agreement the whole or any part of the Facility Equipment shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Agency (with the consent of the Company) and those authorized to exercise such right, or if the temporary use of all or any part of the Facility Equipment shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Company under this Agreement, and

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

(b) Upon the occurrence of a Loss Event, as between the Agency and the Company, the Net Proceeds derived therefrom with respect to the Facility Equipment shall be paid to the Company, and the Company shall elect (by written notice to the Agency), as to each item of damaged or destroyed Facility Equipment, to either

(i) promptly and diligently replace, repair or restore the Facility Equipment to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent utility, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Company shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency or any other Person, nor shall the rent or other amounts payable by the Company under this Agreement be abated, postponed or reduced, or

(ii) discard or otherwise dispose of such item for use other than by the Company or Affiliates, and not replace, repair or restore the same.

(c) Any replacement, repair or restoration of the Facility Equipment shall

(i) automatically be deemed a part of the Facility Equipment and owned by the Agency, and be subject to this Agreement (except such Facility Equipment will not be subject to a new retention period unless the repair, replacement or restoration is effected with Sales Tax Savings (Company),

(ii) not change the nature of the Project Premises as a qualified "project" as defined in the Act, and

(iii) be effected with due diligence in a good and workmanlike manner, in compliance in all material respects with all applicable Legal Requirements and be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts(s) therefor.

(d) The Agency and the Company shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, but the settlement, compromise, arbitration or adjustment of any such claim or demand shall be decided by, and, as between the Agency and the Company paid to, the Company. The Agency shall, at the sole cost and expense of the Company, cooperate with the Company in the settlement, compromise, arbitration or adjustment of any such claim or demand and shall execute such documents as shall be reasonably necessary to accomplish the same.

ARTICLE VI
Particular Covenants

Section 6.1. Dissolution or Merger of the Company; Restrictions on the Company. The Company hereby covenants and agrees that, at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State of New York and either be organized under the laws of the State of New York or the laws of any other state of the United States and duly qualified to do business in the State of New York, (iii) not liquidate, wind-up, dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (iv) not consolidate with or merge into another corporation or another legal entity or permit one or more other legal entities to consolidate with or merge into it. Notwithstanding the provisions of the immediately preceding sentence, the Company may, however, without violating the foregoing, upon prompt written notice to the Agency after the initial public disclosure concerning such transaction, consolidate with or merge into another corporation or other legal entity, or permit one or more other legal entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation or other legal entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if (i) the Company is the surviving, resulting or transferee legal entity, or (ii) in the event that the Company is not the surviving, resulting or transferee legal entity, such other legal entity (A) is solvent and subject to service of process in the State and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, (C) is engaged in the Company Business, (D) assumes in writing all of the obligations of the Company contained in this Agreement and in each other Project Document to which the Company shall be a party, and, in the Opinion of Counsel delivered to the Agency, such corporation or other legal entity shall be bound by all of the terms of this Agreement and of each other Project Document to which the Company shall be a party, and (E) in the opinion of an Independent Accountant (which may take the form of a published financial statement) delivered to the Agency, has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to the lesser of (x) the net worth of the Company immediately prior to such merger, consolidation, sale or transfer or (y) $200,000,000.

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

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

planning, design, acquisition, leasing, licensing, equipping, installation, maintenance, repair or replacement of the Project Property or the Facility Improvement Project or any part thereof or the effecting of any work done with respect to the Project Property or the Facility Improvement Project, (iii) failure by the Company or the Developer (or any other Person operating or using the Project Property or any part thereof) to comply with any Legal Requirement; (iv) compliance with any Legal Requirement imposed upon the Company, or the Indemnified Parties (v) any defects (whether latent or patent) in the Project Property or the Facility Improvement Project or any part of either thereof, (vi) the maintenance, repair, replacement, restoration, renovation, improvement, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting, licensing, sublicensing or operation of the Project Property or the Facility Improvement Project or any portion of either thereof, (vii) this Agreement, the Overlease Agreement, the PILOT Agreement, the Sales Tax Letters, or any other Project Document, or other document or instrument required to be delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. No Indemnified Party shall be liable for any damage or injury to the person or property of the Company or any Affiliate or their respective directors, officers, employees, agents or servants or persons under the control or supervision of the Company or such Affiliate or any other Person who may be about the Project Property or involved with the Project Property or the Facility Improvement Project due to any act or negligence of any Person other than, with respect to any such Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

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

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used and will not use Hazardous Materials (as defined hereinafter) on, from, or affecting the Project Premises in any manner which violates Federal, state or

local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Company's knowledge, the Project Premises does not contain any Hazardous Materials which are or have been used in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Property or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, any Affiliate, or any tenant or subtenant of the Company, a release of Hazardous Materials onto the Project Property or any portion thereof or onto any other property from the Project Property in violation of any environmental law or regulation thereof. The Company shall comply with, and exercise good faith diligent efforts to ensure compliance by Affiliates and all tenants or subtenants of the Company at the Project Premises with all applicable Federal, state and local laws, ordinances, rules and regulations as may relate to the Project Property, whenever and by whomever triggered, and shall obtain and comply with, and exercise good faith diligent efforts to ensure that all tenants or subtenants of the Company at the Project Premises obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) to the extent required by law take such action as is necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Project Premises (y) in accordance with all applicable Federal, state and local laws, ordinances, rules and regulations, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities (except to the extent contested in good faith and provided the Company shall have provided adequate reserves therefor and except to the extent that Developer has the obligation to take such actions under the terms of the Prime Lease), and (ii) defend, indemnify, and hold harmless the Agency from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or otherwise at the Project Property; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities made in accordance with environmental laws and regulations, or any requirements of the Agency made in accordance with environmental laws and regulations, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities that the Company may have to the Agency at common law, and the indemnifications, releases and hold harmless provisions set forth herein shall survive the termination of this Agreement.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended,

with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under such Indemnified Party's control or supervision.

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

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

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

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

(b) On the Lease Commencement Date, the Company shall pay to the Agency, and the Agency acknowledges receipt of a financing fee in the amount of $391,618, of which $48,484 of such fee has been received by the Agency prior to the date hereof. The Company further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of $1,000 payable upon the Lease Commencement Date and on every anniversary of the Lease Commencement Date until the termination of this Agreement.

Section 6.4. Retention of Interest in Project Property. The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Project Property or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 5.1, 7.2 and 8.2 hereof, or except as provided in the PILOT Agreement, without the prior written consent of the Company and any purported disposition without such consent shall be void.

Section 6.5. Financial Statements; No Default Certificates. (a) Upon request of the Agency, the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company certifying (i) that the insurance the Company maintains complies with the provisions of Section 4.4 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Company, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect, (ii) the Agency has been vested with valid leasehold title to all Facility Improvements and has a valid leasehold interest in all other Facility Improvements and that all property constituting the Project Premises is subject to the leasehold interest of this Agreement, (iii) that the Agency has been vested with valid title to all items of Facility Equipment and that all property constituting the Current Project Property is subject to the leasehold interest of this Agreement, (iv) that no item of Facility Equipment has been removed from the Project Premises except in accordance with Sections 4.2 or 5.2 hereof, and (v) whether the Company has availed itself of the benefits of the Sales Tax Letter (Company) in compliance with the requirements of the Sales Tax Letter (Company). In addition, upon twenty (20) days prior request by the Agency, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Company as to whether any default shall exist on the part of the Company in those provisions of this Agreement as shall be the subject of the request (which request must be specific in nature), and if so, the details thereof and the action proposed to be taken by the Company to cure the same.

(b) The Company shall promptly notify the Agency of the occurrence and continuance of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under this Agreement of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company 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 Company shall state this fact in the notice.

(c) Upon written request of the Agency, the Company shall furnish to the Agency, as soon as available and in any event within ninety (90) days after the close of the prior Fiscal Year of the Company, a copy of the annual audited financial statements of the Company (including balance sheet, financial position, earnings and retained earnings statements) for the most recently completed Fiscal Year, prepared in accordance with generally accepted accounting principles, certified by an Independent Accountant. In addition, upon twenty (20) days prior written request by the Agency specifically citing one or more sections of this Agreement, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Company either stating that to his/her knowledge no default or breach exists under such sections hereof or describing with specificity each such default or breach of which he/she has knowledge.

Section 6.6. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered and attached, made or issued against any of the Project Property or the Agency's fee or leasehold interest therein (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), or any claims, whether or not valid, is made against the Project Property or any part thereof or the Agency's fee or leasehold interest therein, the Company or against any of the rentals or other amounts payable under this Agreement or the PILOT Agreement or any of the interests of the Company under this Agreement, the PILOT Agreement or under any other Project Document other than Liens granted by any of the Agency, the Company, or the Developer in Facility Improvements to secure the financing or refinancing thereof as provided in Section 6.22 hereof, Liens for Impositions (as defined in Section 4.2 hereof) not yet

payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.6(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Property or the rentals or other amounts payable under this Agreement or any other Project Document.

(b) The Company may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Project Property or any portion thereof or interest therein or against the Agency or the Company or against any of the rentals or other amounts payable under this Agreement or any other Project Document, (2) neither the Project Property nor any portion thereof or interest therein would be in any danger of being sold, forfeited or lost, and (3) neither the Company nor the Agency would be in any danger of any criminal or civil liability for failure to comply therewith.

(c) At the written request of the Agency, the Company shall provide to the Agency all reasonable information as may be requested with respect to any Lien (as described in Section 6.5(a) hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Company in connection therewith.

Section 6.7. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Prime Lease and other Permitted Encumbrances, so long as an Event of Default shall not exist hereunder, the Company shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Project Property without molestation or disturbance by or from the Agency or any Person claiming through the Agency, subject to Permitted Encumbrances. The Company covenants and agrees that the Agency shall have, hold and enjoy, during the term hereof, peaceful, quiet and an undisputed leasehold interest in the Project Property, and the Company (at the sole cost and expense of the Company) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.8. No Warranty of Condition or Suitability. THE AGENCY HAS NOT MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT PROPERTY ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT PREMISES, OR THE SUITABILITY OF THE PROJECT PROPERTY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ANY OTHER PERSON. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT PROPERTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY SHALL NOT ASSERT ANY CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE PROJECT PROPERTY IS NOT SUITABLE OR FIT

FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROJECT PROPERTY OR THE USE OR MAINTENANCE OF ANY THEREOF OR THE FAILURE OF OPERATION OF ANY THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT OF ANY THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.9. Subtenant Survey. The Company shall file with the Agency by January 1 of each year, commencing January 1, 2005, a certificate of an Authorized Representative with respect to all tenancies in effect at the Project Premises, in the form attached hereto as Schedule C.

Section 6.10. Employment Information, Opportunities and Guidelines. (a) On August 1 of each year, commencing August 1, 2003, until the termination of this Agreement the Company 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 D hereto, certified as to accuracy by the Company.

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

(c) The Company hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the 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 Company and the employees of the Company to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 and any other applicable laws, rules or regulations. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the possession of the Company or its Affiliates which is pertinent to the Company and the employees of the Company to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company or its Affiliates, 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 Company to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.11. Confidentiality. The Agency and the Company mutually covenant and agree, to the maximum extent permitted by applicable law, to maintain, and to cause each of its officers, directors, employees, agents, attorneys and advisors to maintain, the strict confidentiality of this Agreement, the information furnished to the Agency pursuant to Section 6.5 hereof, the transactions contemplated by this Agreement and the underlying Benefits, and all other discussions, transmissions, communications, negotiations, instruments, documents and memoranda connected with the transactions contemplated hereunder and thereunder (the "Project Materials"), other than the Sales Tax Letters, which may be exhibited to others for the purposes therein stated; provided, however, that after the Lease Commencement Date, the Agency shall have the option to disclose any and all Project Materials upon a determination by the Agency in its sole discretion that such information may be, or is required to be, disclosed under applicable law, including but not limited to Article 6 - Freedom of Information Law, of the New York Public Officers Law. The Agency shall give the Company notice of the request for disclosure so that the Company may advise the Agency whether it believes that such disclosure is warranted under current law. The Company may disclose the terms hereof to the Developer and its lenders. The Company may also disclose the terms and conditions of the Project Documents to its advisors, accountants, consultants and to any prospective Merger or Acquisition partners, or to any prospective purchasers of the Company's interest in the Agency Owned Facility Realty who agree to treat such information on a confidential basis.

Section 6.12. Further Assurances. The Company and the Agency each covenant and agree that they will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Company (to the extent same shall constitute Extraordinary Costs of Administration), as the Agency or the Company reasonably deem necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Company hereunder, or under any other Project Document.

Section 6.13. Project Registry (Facility Equipment). The Agency shall maintain the Project Registry (Facility Equipment), which shall be available for inspection during Agency regular business hours upon reasonable request therefor by the Company. On the Lease Commencement Date and on August 1 of each year during the Term of this Agreement commencing August 1, 2002, the Company shall deliver to the Agency, a certificate of an Authorized Representative of the Company, in the form of Schedule A hereto, certifying the deletions and other updates that should be made to the Project Registry (Facility Equipment) so that such registry shall constitute (taking into consideration such additions and deletions and all previously certified additions and deletions) an accurate and complete description of the property comprising the Facility Equipment.

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

Section 6.14. Annual Filing Regarding Sales Tax Exemption. The Company shall, on February 28, 2002 and each February 28 thereafter until the earlier of (i) the termination of this Agreement, or (ii) the first February 28th following the date upon which the Company shall realize the Maximum Sales Tax Amount (Company), annually file a statement (Form ST-340 or any successor or additional mandated form in the form attached hereto as Schedule E) with the New York State Department of Taxation and Finance, on a form and in a manner as is 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 Company, including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to Second Preliminary Sales Tax Letter, the Sales Tax Letter (Company) or this Agreement. Concurrently with the filing of such statement, the Company shall deliver a copy of same to the Agency. Should the Company fail to comply with the foregoing requirements to the extent required and at the times prescribed by applicable rules and regulations (in each case beyond any applicable grace or cure provisions promulgated by the New York State Department of Taxation and Finance), the Company shall immediately (i) 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, and (ii) stop using the Sales Tax Letter (Company), and the Agency shall have no liability (whether pecuniary or otherwise) for any failure of the Company to realize sales and/or use tax exemptions intended to be conferred pursuant to the Sales Tax Letter (Company).

Section 6.15. Right to Cure Agency Defaults. The Agency hereby grants to the Company full authority for the account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default, in the name and stead of the Agency, with full power of substitution.

Section 6.16. Enforcement of Rights Under Prime Lease Against Developer. The Company covenants and agrees that to the extent that the Developer is obligated to the Company under the Prime Lease to comply (or to cause tenants in the Project Building to comply) with all Legal Requirements (the foregoing covenants of the Developer being the "Developer Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Developer Covenants, and upon the direction of the Agency, the Company shall promptly exercise reasonable good faith diligent efforts to enforce the Developer Covenants against the Developer.

Section 6.17. Covenants with Respect to the Prime Lease. (a) The Company covenants and agrees that it shall not enter into consent, permit or approve an amendment, supplement or modification to (i) the Condominium Declaration or the Condominium By-Laws (to the extent the Company shall otherwise have the right to do so) without the prior written consent of the Agency; or (ii) the Prime Lease which would adversely affect the interests of the Agency (or otherwise amend, supplement, modify or waive any of the Developer Covenants, as

defined in Section 6.16 hereof). Promptly following the execution thereof, the Company shall furnish copies of any amendment, supplement or modification to the Prime Lease to the Agency.

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

Section 6.18. Release of Portions of the Project Premises. (a) Upon receipt by the Agency of written notice from an Authorized Representative of the Company, describing any portion of the Project Premises constituting an Agency Owned Unit or Agency Owned Units and the date, which shall be a Business Day not sooner than thirty (30) days from the receipt by the Agency of such notice, upon which title to such portion of the Project Premises constituting an Agency Owned Unit or Agency Owned Units is to be conveyed by the Agency to the Developer, then, to the extent then permitted under applicable law, and subject to the provisions of the PILOT Agreement, the Agency shall on the date indicated in such notice and at the sole cost and expense of the Company, convey title to such Agency Owned Unit or Agency Owned Units by bargain and sale deed without covenants against grantor's acts to the Developer. Upon the conveyance of title to any such Agency Owned Unit, title to any Facility Improvements constituting a part thereof shall be deemed conveyed therewith to the Developer. To the extent required by the terms of any of the Overlease Agreement, the Prime Lease, the Company Lease, this Agreement, but not as a condition to the conveyance by the Agency of title to such Agency Owned Unit or Agency Owned Units, the Agency shall enter into an amendment to the Overlease Agreement, the Company Lease, the PILOT Agreement, this Agreement and, at the sole cost and expense of the Company, shall take such further action to effectuate such amendments as the Company may reasonably request, to effect or facilitate such conveyance of title from the Agency to the Developer and to remove such Agency Owned Unit or Agency Owned Units from the Agency Owned Facility Realty; *provided, however*, that the removal of an Agency Owned Unit shall not necessarily require the exclusion of such premises as Developer Owned Leased Premises.

(b) Upon receipt by the Agency of written notice from an Authorized Representative of the Company, describing any portion of the Project Premises constituting a portion of the Developer Owned Leased Premises that is to be released from the leasehold estate granted therein by the Company to the Agency pursuant to the Company Lease and the date, which shall be a Business Day not sooner than thirty (30) days from the receipt by the Agency of such notice, upon which such portion of the Developer Owned Leased Premises is to cease to be leased to the Agency and thereby no longer subject to this Agreement nor part of the Project Premises, then, to the extent then permitted under applicable law, and subject to the provisions of the PILOT Agreement, the Agency shall on the date indicated in such notice and at the sole cost and expense of the Company, effect the release to the Company of all of the Agency's right, title and interest in such portion of the Project Premises constituting a portion of the Developer Owned Leased Premises. Upon the release of such portion of the Developer Owned Leased Premises, all of the Agency's right, title and interest in the Facility Improvements shall be deemed released concurrently therewith. To the extent required by the terms of any of the Prime Lease, the Company Lease, the PILOT Agreement and this Agreement, but not as a condition to such conveyance and release by the Agency, the Agency shall enter into an amendment to the Company Lease, the PILOT Agreement and this Agreement, at the sole cost and expense of the Company, and shall take such further action to effectuate such amendments as the Company may

reasonably request, to effect or facilitate such release to the Company of all of the Agency's right, title and interest in such portion of the Developer Owned Leased Premises and to remove such portion of such premises from the Facility Realty.

(c) Subject to the provisions of the Prime Lease and Section 9.2(b) hereof, the Company shall have the right to have up to twenty percent (20%) of the aggregate rentable square feet of the Project Premises used or occupied by Persons constituting Non-Qualified Users (whether by sublease, license or otherwise) (the "Sublet Space Limitation"), provided that no such use or occupancy would violate Agency Requirements. In the event that more than twenty percent (20%) of the aggregate rentable square feet of the Project Premises shall be used or occupied by Non-Qualified Users (whether by sublease, license or otherwise), the Company shall promptly deliver written notice thereof to the Agency. Thereupon, at the sole cost and expense of the Company, the Company Lease and this Agreement shall terminate with respect to all of the Project Premises as shall be so used or occupied by Persons constituting Non-Qualified Users (including such portion of the Project Premises which is not in excess of the Sublet Space Limitation) as if the term of this Agreement and of the Company Lease with respect to such portions of the Project Premises had expired thereby causing title to that portion of the Project Premises as shall constitute Agency Owned Facility Realty to revert to the Developer and shall convey to the Developer title to such Agency Owned Facility Realty by bargain and sale deed without covenants against grantor's acts *provided, however*, that if the Company shall include in such notice of subletting to the Agency an intention on the part of the Lessees to cause any such portion of the Project Premises constituting an Agency Owned Unit to be subdivided and re-configured into multiple Agency Owned Units, and such subdivision shall be effected within one hundred eighty (180) days of the date of delivery of such notice, the Agency shall cause the reversion and conveyance of only such newly created Agency Owned Units as shall be used or occupied by Non-Qualified Users. The Company shall, at its sole cost and expense, take such action to effectuate such termination as the Agency may reasonably request, including, without limitation, the entering into of such amendments to this Agreement, the Company Lease, the PILOT Agreement and the Overlease as the Agency may require to effect such termination.

(d) Notwithstanding the foregoing, in the event the use or possession of any portion of the Project Premises shall at any time be for a purpose or by a Person which is not a qualified "project" as defined in the Act, the Company shall, upon receipt of written notice from the Agency to such effect, proceed with diligent good faith efforts to cause such use or possession to be for a purpose and by a Person within the definition of qualified "project" as defined in the Act, or failing that, to cause that portion of the Project Premises to no longer be leased to the Agency pursuant to the Company Lease and in the event that such portion of the Project Premises shall constitute Agency Owned Facility Realty, cause such Agency Owned Facility Realty to no longer be owned by the Agency whether by reversion or conveyance of the entirety. Subject to the provisions of Section 6.3 hereof, the Agency shall cooperate with the Company and execute such documents or other such instruments, as the Company shall reasonably request, at the sole cost and expense of the Company, to effect such release or transfer from the Agency.

(e) In the event that the Company shall assign the Prime Lease to a Person other than an Affiliate or shall otherwise abandon all or substantially all of the Project Premises, resulting in an Event of Default having been declared hereunder, the Agency shall (i) to the extent such Project Premises constitutes Agency Owned Unit or Agency Owned Units, convey to the Developer, by bargain and sale deed without covenants against grantor's acts, all of the Agency's right, title and interests in and to the Agency Owned Units as shall constitute such portion of the Project Premises so abandoned, terminate this Agreement, the Overlease, the PILOT Agreement and the Company Lease.

Section 6.19. Additional Agency Owned Units; Additional Developer Owned Leased Premises. (a) The Company shall have the right, from time to time, to cause the Developer to convey to the Agency fee title (subject to reverter) to an additional Unit or Additional Units (the "Additional Agency Owned Unit(s)") to be made subject to the Overlease Agreement, the Prime Lease, the Company Lease and this Agreement, on the condition, however, that:

(i) at least thirty (30) days prior to the proposed conveyance, the Company shall have delivered to the Agency a certificate of an Authorized Representative of the Company stating the intention of the Company to effect such conveyance, and certifying (it being acknowledged by the Agency that certifications by the Company with respect to Rentable Square Feet shall be based in good faith and in compliance with the applicable provisions of the Prime Lease and the PILOT Agreement) (A) as to the Additional Unit(s) to be conveyed and the proposed date of such conveyance which date shall be a Business Day (the "Additional Unit Closing Date"); (B) as to the aggregate Rentable Square Feet that each such Additional Unit comprises; (C) as to the aggregate Rentable Square Feet of Agency Owned Facility Realty and of Developer Owned Leased Premises, respectively, that the Agency would own or lease (as the case may be) after such conveyance; (D) as to a description of any Non-Qualified User as shall be occupying or using any portion of such Additional Unit(s) (accompanied by a true and complete copy of the lease or other use or occupancy agreement with such Non-Qualified User), the use by such Non-Qualified User of such space, that the aggregate amount of the Rentable Square Feet of each such Additional Unit used or occupied by a Non-Qualified User is not in excess of twenty percent (20%) of the total rentable square feet of such Additional Unit, that the Agency is not a landlord to such Non-Qualified User whether as a matter of agreement with such Non-Qualified User or by law, and the Agency has and shall have no landlord obligations or liabilities owing to such Non-Qualified User, that no such use is for a retail purpose in violation of the Act, the Rentable Square Feet occupied by each such Non-Qualified User, the aggregate amount of Rentable Square Feet of the Project Premises after the conveyance of the Additional Unit(s) to the Agency as would be occupied by each Non-Qualified User, and the percentage of aggregate Rentable Square Feet as would comprise each of the Project Premises and the Initial Agency Owned Facility Realty after such conveyance which would be used or occupied by all Non-Qualified Users; (E) that each of the Additional Unit(s) to be conveyed constitutes a separate tax lot; (F) that other than that portion of the Additional Unit(s) stated to be used or occupied by a Non-Qualified User(s), the space comprising the Additional Unit(s) will either remain vacant or be occupied and used by the Company and/or Affiliates in the Company Business; (G) that no portion of the Additional Unit(s) are or shall be used by a Person or for a purpose as shall not constitute a qualified "project" under the Act; (H) that the effect of the conveyance will not violate the Sublet Space Limitation as set forth in Section 6.18(d) hereof; and (I) that no "event of default" exists under the Prime Lease and no Event of Default exists under this Agreement or the PILOT Agreement, nor an event which upon notice or lapse of time or both would constitute such an Event of Default; and

(ii) on the Additional Unit Closing Date, the Agency shall receive:

(A) a deed(s) to the Additional Unit(s) from the Developer to the Agency conveying to the Agency fee title (subject to reverter) to such Additional Unit(s), such deed to be substantially in the form of the deed(s) delivered to the Agency on the Lease Commencement Date conveying to the Agency a fee on limitation to the Agency Owned Units;

(B) a "Phase I Environmental Audit" and an executed Form ACP-5 with respect to the Additional Unit(s), reasonably satisfactory to the Agency by an environmental engineer who is reasonably acceptable to the Agency;

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

(D) an endorsement to the existing fee title insurance policy described in Section 2.4 hereof (or an additional title insurance policy of form and tenor reasonably acceptable to the Agency) including the Additional Unit(s) within the policy; *provided, however,* that such endorsement or separate title insurance policy shall not indicate any exceptions to title (other than Permitted Exceptions) which would subject the Agency to liability and for which the Agency does not receive an indemnity reasonably satisfactory to the Agency;

(E) if the Additional Unit(s) constitute less than an entire floor within the Project Building, the Agency shall have reasonably concurred in the amount of rentable square feet comprising such Additional Unit (which amount of Rentable Square Feet shall be subject to adjustment for purposes of this Agreement and the PILOT Agreement; and

(F) a certificate of an Authorized Representative of the Company certifying, as of the Additional Unit Closing Date, as true and correct the matters set forth in Section 6.19(a)(i) above;

then, on the Additional Unit Closing Date, if no "event of default" shall exist under the Prime Lease and no Event of Default shall exist under this Agreement or the PILOT Agreement, or an event which upon notice or lapse of time or both would become such an Event of Default, the Agency shall accept title to the Additional Unit(s), and shall enter into an amendment to this Agreement, to the Overlease Agreement and to the Company Lease to reflect the inclusion of the Additional Unit(s) in the Agency Owned Facility Realty leased under this Agreement, the Overlease Agreement, the Prime Lease and the Company Lease.

(b) The Company shall further have the right, from time to time, to lease to the Agency pursuant to the Company Lease additional Developer Owned Leased Premises to be made subject to the Prime Lease, the Company Lease and this Agreement, on the condition, however, that:

(i) at least thirty (30) days prior to the proposed letting, the Company shall have delivered to the Agency a certificate of an Authorized Representative of the Company stating the intention of the Company to effect such letting, and certifying (it being acknowledged by the Agency that certifications by the Company with respect to Rentable Square Feet shall be based in good faith and in compliance with the applicable provisions of the Prime Lease and the PILOT Agreement) (A) as to the Developer Owned Leased Premises to be leased to the Agency and the proposed date of such letting which date shall be a Business Day (the "Developer Owned Leased Premises Closing Date"); (B) as to the aggregate Rentable Square Feet which such Developer Owned Leased Premises comprises; (C) as to the aggregate Rentable Square Feet of Agency Owned Facility Realty and of Developer Owned Leased Premises, respectively, which the Agency would own or lease (as the case may be) after such

letting; (D) that no Non-Qualified User shall be occupying or using any portion of such Developer Owned Leased Premises; (E) that the Maximum Sales Tax Savings Amount (Company) has not yet been attained; and (F) that no "event of default" exists under the Prime Lease and no Event of Default exists under this Agreement or the PILOT Agreement, nor an event which upon notice or lapse of time or both would constitute such an Event of Default; and

(ii) on the Developer Owned Leased Premises Closing Date, the Agency shall receive:

(A) a leasehold interest in the Developer Owned Leased Premises from the Company pursuant to the Company Lease;

(B) a "Phase I Environmental Audit" and an executed Form ACP-5 with respect to the Developer Owned Leased Premises, reasonably satisfactory to the Agency, by an environmental engineer who is reasonably acceptable to the Agency;

(C) an endorsement to the public liability and other insurance referred to in Section 4.4 hereof including such Developer Owned Leased Premises within the property covered by such insurance; and

(D) a certificate of an Authorized Representative of the Company certifying, as of the Developer Owned Leased Premises Closing Date, as true and correct the matters set forth in Section 6.19 (b) (i) above;

then, on the Developer Owned Leased Premises Closing Date, if no "event of default" shall exist under the Prime Lease and no Event of Default shall exist under this Agreement or the PILOT Agreement, or an event which upon notice or lapse of time or both would become such an Event of Default, the Agency shall accept a leasehold interest in the Developer Owned Leased Premises, and shall enter into an amendment to this Agreement and to the Company Lease to reflect the inclusion of the Developer Owned Leased Premises in the Developer Owned Leased Premises leased under this Agreement, the Prime Lease and the Company Lease.

Section 6.20. Company to Remain Tenant Under Prime Lease. In the event the Company shall at any time or for any reason assign its interest in the Prime Lease to an Affiliate, the Company shall also assign its interest in this Agreement, in the Company Lease and the PILOT Agreement to such assignee and cause such assignee to assume in writing all of the obligations of the Company contained in this Agreement, the Company Lease, the Guaranty and the PILOT Agreement jointly and severally with the Company and deliver to the Agency an Opinion of Counsel to the effect that such assignee shall be bound jointly and severally with the Company by all of the terms applicable to the Company under this Agreement, the Company Lease, the Guaranty and the PILOT Agreement.

Section 6.21. Energy Costs Savings. The Agency shall cause EDC to use its good faith efforts to obtain the approvals and/or authorizations, and to negotiate with Con Ed, as necessary, to obtain confirmation from Con Ed that, subject to all of the limitations, terms and conditions of the BIR Program, terms, conditions and limitations of the BIR Program, will make the BIR Energy Load available to the Company with respect to the BIR Premises.

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

(b) Failure of any of the Company to pay any amount (except the obligation of the Company to pay rent under Section 3.3 of this Agreement) that has become due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.3, 4.6, 6.2, 6.3, 6.16, or 9.2 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency (provided however that no Event of Default shall exist hereunder with respect to a failure of the Company to comply with Section 6.16 hereof for so long as the Company shall promptly exercise good faith diligent efforts to enforce the Developer Covenants against the Developer regardless of the Developer's compliance therewith);

(c) Failure of the Company to observe and perform any covenant, condition or agreement on its part to be performed under Section 9.2 (as to transfers or assignments) hereof;

(d) Failure of the Company to pay any amount or to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a), (b), or (c) above) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same and fails to cure the same within one hundred eighty (180) days;

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

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

any of the foregoing shall be entered and continue unstayed and in effect, for a period of one-hundred eighty (180) days; or the Company shall acquiesce in writing to any of the foregoing; or any order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code;

(g) Any representation or warranty made (i) by the Company in the application and related materials submitted to the Agency for approval of the Project or its financing, or (ii) by the Company herein, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; and which, in the case of clauses (i), (ii) or (iii) hereof, (y) if the damage resulting therefrom shall be capable of being cured, and such damage shall not in fact be cured within thirty (30) days after receipt by the Company of notice of the false, misleading or incorrect representation or warranty, or, if by reason of such damage the same can reasonably be remedied over a reasonable period of time, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same and fails to cure the same within one hundred eighty (180) days; or (z) shall not have been made in good faith;

(h) An Event of Default under any of the Company Project Documents shall occur and be continuing;

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

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

(k) The abandonment by the Company of all or substantially all of the Project Premises or the subletting by the Company of the Project Premises to any Person as shall not constitute a Affiliate resulting in the occurrence of an Event of Default hereunder.

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

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

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

(c) The Agency may suspend or terminate the Sales Tax Letters or not reconfirm the

Sales Tax Letters or require the Company to surrender the Sales Tax Letter (Company) and cause the Developer to surrender the Sales Tax Letter (Developer) to the Agency for cancellation;

(d) The Agency may require the Company to pay an amount equal to Full Real Estate Taxes (as defined under the PILOT Agreement with respect to Exempt Agency Owned Facility Realty (as defined in the PILOT Agreement) pursuant to Section 13 of the PILOT Agreement; 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 Company under this Agreement.

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

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from its obligations hereunder, including without limitation, the obligations and/or covenants of the Company under Sections 6.2, 6.3, 7.6, 8.3, 9.11 or 9.13, which shall survive any such action.

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

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

Section 7.5. Effect of Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement, or any other Project Document on account of any Event of Default hereunder or any other Project Document shall have been discontinued or abandoned for

any reason, then, after giving effect to any such adverse ruling, and in every such case, the Agency shall be restored, respectively, to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default hereunder shall occur and the Agency should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred. The provisions of this Section 7.6 shall survive the termination of this Agreement.

ARTICLE VIII
Options; Recapture of Benefits

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

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

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

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

Upon conveyance of the Agency's interest in the Project Property pursuant to this Section 8.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations and/or covenants of the Company under Sections 6.2, 6.3, 7.6, 8.3, 9.11 or 9.13 shall survive such termination.

Section 8.3. Recapture of Aggregate 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 Company and the Developer for the benefit of the Company in connection with the Facility Improvement Project and the Equipment Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a) (i) If there shall occur a Recapture Event (as defined below) prior to the Project

Termination Date, the Company shall pay to the Agency as a return of public benefits conferred by the Agency, all Aggregate Benefits (as defined below).

(ii) If there shall occur a Recapture Event after the Lease Commencement Date, the Company shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(a) one hundred per cent (100%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within the first sixteen (16) years after the Lease Commencement Date;

(b) ninety per cent (90%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within seventeen (17) years after the Lease Commencement Date;

(c) eighty per cent (80%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within eighteen (18) years after the Lease Commencement Date;

(d) seventy per cent (70%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within nineteen (19) years after the Lease Commencement Date;

(e) sixty per cent (60%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty (20) years after the Lease Commencement Date;

(f) fifty per cent (50%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty-one (21) years after the Lease Commencement Date;

(g) forty per cent (40%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty-two (22) years after the Lease Commencement Date;

(h) thirty per cent (30%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty-three (23) years after the Lease Commencement Date;

(i) twenty per cent (20%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty-four (24) years after the Lease Commencement Date;

(j) ten per cent (10%) of the Aggregate Benefits (as defined below) if the Recapture Event occurs within twenty-five (25) years after the Lease Commencement Date.

The term "Aggregate Benefits" shall mean, collectively, the aggregate amount of Benefits realized by the Company and the Developer for the benefit of the Company, from October 1, 2001 through the date of computation thereof, pursuant to any of the Developer Project

Documents or the Company Project Documents and not repaid pursuant to Section 2.5 of this Agreement.

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

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

(2) The Company shall have failed to occupy the Project Premises by January 1, 2005 or shall have ceased all or substantially all of its operations at the Project Premises (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City);

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

(4) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Premises;

(5) The Company shall have subleased all or any portion of the Project Premises in violation of the limitations imposed by Section 9.2 hereof, without the prior written consent of the Agency; or

(6) The Company shall have assigned, subleased, transferred or otherwise disposed of all or substantially all of its interest in the Project Premises, except as provided in Section 6.1 hereof.

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 Project Premises, or (ii) the inability at law of the Developer to rebuild, repair, restore or replace the Project Premises 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 Company or any Affiliate.

(b) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Company's interest in Project Premises or any portion thereof made within twenty-five (25) years of the Lease Commencement Date, which notification shall set forth the terms of such Recapture Event and/or disposition.

(c) In the event any payment owing by the Company under this Section 8.3 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the rate of twelve percent (12%) per annum (or, if the Company shall have acted in bad faith or engaged in willful misconduct, eighteen percent (18%) per annum) calculated from the date upon which such Benefits were realized by the Company or the Developer, as the case may be, 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 Company under this Section 8.3.

(e) The provisions of this Section 8.3 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. (a) 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 to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of (x) the Company to pay the rental payments under Sections 3.3 and 7.2 hereof, (y) the Company to make other payments required under the terms hereof, or (z) the Company to comply with Section 4.3, 4.4, 4.6, 6.2, 6.3, or 9.2 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. The settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and the above requirements that 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 fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

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

(c) 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 Company.

Section 9.2. Assignment or Sublease. (a) Except as otherwise expressly permitted in Section 6.1 hereof and except for assignments, transfers or subleases in favor of any of its Affiliates, the Company shall not at any time assign or transfer this Agreement without the prior written consent of the Agency (which consent may be unreasonably withheld); unless (1) the Company shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (2) any assignee or transferee of the Company shall have executed and delivered to the Agency an instrument, in form for recording, in and by which the assignee or transferee shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement (and of each other Project Document to which the Company shall be a party) on the part of the Company to be kept and performed, shall be jointly and severally liable with the Company for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment or transfer shall not cause the obligations of the Company for payment of or the performance of all of the terms,

covenants and conditions of this Agreement, or of any other Project Document to which the Company shall be a party, to cease to be legal, valid and enforceable against the Company, (4) any assignee or transferee shall utilize the Project Property (Facility Improvement) as a qualified " project" as defined in the Act, (5) such assignment or transfer shall not violate any provision of this Agreement, or any other Project Document, (6) such assignment or transfer shall in no way diminish or impair the Company's obligation to carry the insurance required under Section 4.4 of this Agreement and the Company shall furnish written evidence reasonably satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, and (7) each such assignment or transfer contains such other provisions as the Agency may reasonably require (which the Agency shall provide within thirty (30) days after request by the Company). The Company shall furnish or cause to be furnished to the Agency a copy of any such assignment or transfer in substantially final form at least twenty (20) days prior to the date of execution thereof.

(b) Notwithstanding the foregoing, the Company shall have the right, without any change or reduction in the Benefits afforded without obtaining prior consent of the Agency (except as provided in Section of 6 of the PILOT Agreement with respect to Non-Qualified Footage as therein defined and except any subletting in part to its Affiliates) to the sublet (subject to the provisions of Section 6.18 hereof) portions of the Project Premises to one or more Non-Qualified Users not in excess of the Sublet Space Limitation, provided in each case that (1) no such sublessee is a Prohibited Person, (2) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (3) any sublessee shall utilize the Project Property as a qualified "project" as defined in the Act, and (4) prior to the entering into of such sublease, the Company shall have delivered to the Agency:

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

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

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

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

(v) evidence reasonably satisfactory to the Agency that such proposed sublease will not result in more than the Sublet Space Limitation being used or occupied by Non-Qualified Users, and

(vi) a certificate of an Authorized Representative of the Company indicating that such sublease will not violate any provision of the Prime Lease.

In the event the Agency shall reasonably request additional information with respect to the proposed sublease or subtenant, the Company shall deliver such information to the Agency promptly after such

request. In the event that any condition set forth above shall not be satisfied, the Company may, subject to the provisions of Section 6.19 hereof (y) if the proposed sublease shall affect an Agency Owned Unit, (1) cause such Agency Owned Unit to be subdivided into separate Agency Owned Units with relation to the proposed sublet space, and cause the existing Agency Owned Unit which includes all of the proposed sublet space, to be conveyed to the Developer, or (2) terminate this Agreement with respect to such new Agency Owned Unit or existing Agency Owned Unit and thereby cause title to such Agency Owned Unit to revert to the Developer, or (z) if the proposed sublet space shall affect the Developer Owned Leased Premises, cause such proposed sublet space to be excluded from the premises leased to the Agency by the Company pursuant to the Company Lease (and thereby leased by the Agency to the Company as part of the Facility Realty pursuant to this Agreement).

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

(c) The Company shall have the right to request that the Agency confirm in writing to the Company whether any assignee or transferee of this Agreement or sublessee of the Project Premises is a Prohibited Person, or whether any assignment, transfer or sublease would cause the Project Property to no longer be a "qualified" project under the Act. Within twenty (20) Business Days after the Agency receives any such written request of the Company (which request shall include pertinent information relating to the proposed assignee, sublessee or transferee), or if the Agency shall reasonably request further information of the Company, then within ten (10) Business Days after the receipt by the Agency of the additional information so requested, the Agency shall confirm to the Company (in writing) whether or not the assignee, transferee or sublessee is a Prohibited Person or whether the assignment, transfer, or sublease would cause the Project Property to cease to be "qualified" project under the Act. The Agency agrees that if it does not, within the aforementioned time periods, deliver notice to the Company stating whether or not such assignee, transferee or sublessee is a Prohibited Person, the Company shall be entitled to assume that the assignee, transferee or sublessee is not a Prohibited Person, and that the assignment or sublease would not cause the Project Premises to cease to be a qualified "project" under the Act. The Company shall be entitled to conclusively rely on such confirmation (or waiver) in connection with any assignment, transfer or sublease.

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

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

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

(b) If to the Company, Federal Express Corporation, 3620 Hacks Cross Road, 3rd Floor, Building B, Memphis, Tennessee 38125, Attention: Managing Director, Business Transactions. A copy of each default notice to the Company shall also be sent to the Company's counsel, Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022, Attention: Steven P. Polivy, Esq., and to the Developer, 660 Twelfth L.L.C., c/o Rockrose Development Corp., 290 Park Avenue South, New York, New York 10010, Attention: General Counsel, with a copy to Mandel Resnik & Kaiser P.C., 220 East 42nd Street, New York, New York 10017, Attention: Ivan Moskowitz, Esq. and Stroock & Stroock & Lavan, 180 Maiden Lane, New York, New York 10038, Attention: Ross Moskowitz, Esq.

The Agency and the Company may, by like notice, designate any further or different persons or addresses to which subsequent notices, certificates, requests, approvals, consents or other communications shall be sent. Any notice, certificate, requests, approvals, consents or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered, given and received two (2) Business Days after the mailing thereof, or as of the date delivery is rejected as indicated on the return receipt.

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

Section 9.6. 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 9.7. Inspection of the Project Property. The Company will permit, the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice to enter upon the Project Premises to examine and inspect the Project Property and exercise its rights hereunder and under the other Project Documents with respect to the Project Property. The Company will further permit, the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice to enter upon the Project Premises but solely for the purpose of assuring that (i) the Company is operating the Project Property, or are causing the Project Property to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, or (ii) determining whether the Project Property 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 Project Property as such latter obligation is and shall remain solely the obligation of the Company.

Section 9.8. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.9. Binding Effect. This Agreement shall be binding upon the Agency and the Company and their respective successors and assigns, and inure to the benefit of the Agency, and to no other Person.

Section 9.10. Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or inure to, the benefit of any Person other than the parties hereto.

Section 9.11. Law Governing. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State, without regard to conflict of law principles. The parties agree that Article 2A of the New York Uniform Commercial Code (McKinney's Uniform Commercial §§2A-101 to 2A-532) shall not apply to this Agreement.

Section 9.12. Investment Tax Credit. It is the intention of the parties that as between the Agency and the Company, (a) the Company shall be entitled to all depreciation deductions with respect to the Project Property under Section 167 or 168 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Project Premises and any comparable state and local income tax benefits (whether now existing or hereafter enacted or adopted); and (b) without limiting the generality of the foregoing, any investment tax credit or comparable credit which may ever be available shall accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Company to have such benefit. The Agency makes no representation or warranty whatsoever, however, that any such tax benefits would be available to either the Agency or the Company.

Section 9.13. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Project Property or any matters whatsoever arising out of or in any way connected with this Agreement. The provisions of this Section relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 9.14. Non-Discrimination. At all times during the term of this Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Premises 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.

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

(b) The Company shall furnish to the Agency all information required by the Agency pursuant to this Section 9.14 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 9.14.

(c) The Agency and the Company 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 Project Premises.

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

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any member, director, officer, employee or agent of the Company 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 Company or any natural person executing this Agreement on behalf of the Company.

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

Section 9.17. Requirements of Prime Lease. This Agreement is and shall be subject and subordinate in all respects to the Prime Lease and all the matters to which the Prime Lease is or shall be subject and subordinate. Nothing contained in this Agreement shall be deemed to affect the rights and obligations of the Company under the Prime Lease.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Executive Director and attested by an Assistant Secretary and the Company has caused its corporate name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

ATTEST:

_____
Assistant Secretary

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By _____
Name: Eric J. Deutsch
Title: Executive Director

FEDERAL EXPRESS CORPORATION

By _____
Name:
Title:

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

ATTEST:

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

_____
Assistant Secretary

By_____
Name:
Title:

FEDERAL EXPRESS CORPORATION

By Graham R. Smith
Name: Graham R. Smith
Title: VP

12/24/01

Approved
Legal Department
T.J. Kwoka 011222

STATE OF TENNESSEE)
)ss.:
COUNTY OF SHELBY)

On the 24th day of December, 2001, before me, the undersigned, personally appeared Graham R. Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that, by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Alexander G Bell
Notary Public

My Commission Expires:

8/13/03

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

On the 26th day of December, in the year two thousand and one, before me, the undersigned. personally appeared Eric J. Deutsch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SHERYL A. JOHNSON
Notary Public State of New York
No. 01JO6039167
Qualified in New York County
Commission Expires March 27, 2002

APPENDICES

DESCRIPTION OF REAL PROPERTY

Facility Realty

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows: -

BEGINNING at the corner formed by the intersection of the northerly side of 48th Street and the easterly side of 12th Avenue;

RUNNING THENCE easterly along the northerly side of said West 48th Street 375 feet;

THENCE northerly parallel with 12th Avenue 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block 50 feet;

THENCE northerly parallel with 12th Avenue 100 feet 5 inches to the southerly side of West 49th Street;

THENCE westerly along the southerly side of 49th Street 425 feet to the corner formed by the intersection of the southerly side of 49th Street and the easterly side of 12th Avenue; and

THENCE southerly along the easterly side of 12th Avenue 200 feet 10 inches to the point or place of BEGINNING.

Said premises being commonly known as 640-660 12th Avenue, a/k/a 606-628 West 49th Street, a/k/a 617-633 West 48th Street and 609-611 West 48th Street formerly designated as Lots 1, 14, 15, 21, 24 and 38 (to be merged into Lot 1) in Block 1096 on the Tax Map of the City of New York, Borough of Manhattan.

Agency Owned Facility Realty

THE CONDOMINIUM UNITS (hereinafter referred to as the "Units") in the building (hereinafter referred to as the "Building") known as 660 12th Avenue Condominium and by the Street Number 640-660 12th Avenue a/k/a 606-628 West 49th Street a/k/a 617-633 West 48th Street and 609-611 West 48th Street, County of New York, State of New York, said Units being designated and described as Unit No. 1001 in a Declaration dated 12/11/01 made by 660 Twelfth L.L.C., pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Condominium Act") establishing a Plan for condominium ownership of the Building and the land (hereinafter referred to as the "Land") upon which the Building is situate (which Land is more particularly described in Exhibit A annexed hereto and by this reference made a part hereof), which Declaration was recorded in the New York County Register's Office on 12/20/01, in Reel 3413 Page 1881, and has been amended as set forth on Schedule B annexed and by this reference made a part hereof (which Declaration and Amendments (if applicable) thereto are hereinafter collectively referred to as the "Declaration"). This Unit is also designated as Tax Lot 1001 (to be apportioned from Lots 1, 14, 15, 21, 24 and 38) in Block 1096 of the County of New York on the Tax Map of the Real Property Assessment Department and on the Floor Plans of the Building, Certified by Stuart E. Lerner, Architects, on 12/12/01 and filed with the Real Property Assessment Department on 12/19/01 as Condominium Plan No.1220 and also filed in the Register's Office on 12/20/01 as Condominium Map No. 5853.

TOGETHER with an undivided 87% interest in the General Common Elements (as such term is defined in the Declaration).

TOGETHER with the Limited Common Elements (as defined in the Declaration), appurtenances and all the estate and rights of the Grantor in and to the Units.

TOGETHER with and **SUBJECT** to the rights, obligations, easements, restrictions and other provisions set forth in the Declaration, Floor plans and the By-Laws of 660 12th Avenue Condominium, as the same may be amended from time to time in accordance with the terms thereof (herein after referred to as the "By-Laws"), all of which shall constitute covenants running with the Land and shall bind any person having at any time any interest or estate in the Units, as though recited and stipulated at length herein.

The Land on which the Building and Units are located is situated in the County of New York and State of New York and is more fully described in the Declaration.

Developer Owned Leased Premises

Title No. 815484

THE CONDOMINIUM UNITS (hereinafter referred to as the "Units") in the building (hereinafter referred to as the "Building") known as 660 12th Avenue Condominium and by the Street Number 640-660 12th Avenue a/k/a 606-628 West 49th Street a/k/a 617-633 West 48th Street and 609-611 West 48th Street, County of New York, State of New York, said Units being designated and described as Unit No. 1002 in a Declaration dated 12/11/01 made by 660 Twelfth L.L.C., pursuant to Article 9-B of the Real Property Law of the State of New York (hereinafter referred to as the "Condominium Act") establishing a Plan for condominium ownership of the Building and the land (hereinafter referred to as the "Land") upon which the Building is situate (which Land is more particularly described in Exhibit A annexed hereto and by this reference made a part hereof), which Declaration was recorded in the New York County Register's Office on 12/20/01, in Reel 3413 Page 1881, and has been amended as set forth on Schedule B annexed and by this reference made a part hereof (which Declaration and Amendments (if applicable) thereto are hereinafter collectively referred to as the "Declaration"). This Unit is also designated as Tax Lot 1002 (to be apportioned from Lots 1, 14, 15, 21, 24 and 38) in Block 1096 of the County of New York on the Tax Map of the Real Property Assessment Department and on the Floor Plans of the Building, Certified by Stuart E. Lerner, Architects, on 12/12/01 and filed with the Real Property Assessment Department on 12/19/01 as Condominium Plan No.1220 and also filed in the Register's Office on 12/20/01 as Condominium Map No. 5853.

TOGETHER with an undivided 13% interest in the General Common Elements (as such term is defined in the Declaration).

TOGETHER with the Limited Common Elements (as defined in the Declaration), appurtenances and all the estate and rights of the Grantor in and to the Units.

TOGETHER with and **SUBJECT** to the rights, obligations, easements, restrictions and other provisions set forth in the Declaration, Floor plans and the By-Laws of 660 12th Avenue Condominium, as the same may be amended from time to time in accordance with the terms thereof (herein after referred to as the "By-Laws"), all of which shall constitute covenants running with the Land and shall bind any person having at any time any interest or estate in the Units, as though recited and stipulated at length herein.

The Land on which the Building and Units are located is situated in the County of New York and State of New York and is more fully described in the Declaration.

DESCRIPTION OF PRELIMINARY PROJECT COSTS

PRELIMINARY SALES TAX REPORTING CERTIFICATE OF THE COMPANY

The undersigned DOES HEREBY CERTIFY THAT he/she is an Authorized Representative (as defined in the Lease Agreement referred to below) of FEDERAL EXPRESS CORPORATION, a Delaware Corporation (the "Company"), and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered upon the execution and delivery of that certain Lease Agreement dated as of December 1, 2001 (the "Lease Agreement") by and between the New York City Industrial Development Agency and the Company, in accordance with the provisions of Section 2.5 thereof (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

1. For the period commencing on the issuance of the Second Preliminary Sales Tax Letter, dated, October 1, 2001 (the "Preliminary Sales Tax Letter") and ending on the day preceding the Lease Commencement Date (the "Reporting Period"), Schedule I attached hereto sets forth each Sales Tax Saving availed of by the Company pursuant to the Preliminary Sales Tax Letter, the dollar amount of same, the date availed of, meaning the date of payment and the specific items of Company Project Costs to which each shall relate.

2. All of the Sales Tax Savings described in Schedule I were availed of by the Company in compliance with the provisions of the Preliminary Sales Tax Letter, and no Person other than the Company realized any such Sales Tax Savings (Company).

3. Attached hereto as Schedule II is an accurate and complete description of the property comprising the Facility Equipment.

4. As of the end of the Reporting Period, the amount of Remaining Sales Tax Benefits (Company) is $1,438,000.00.

5. As of the end of the Reporting Period and at all times during such Reporting Period, the Developer was not in default under any provisions of the Preliminary Sales Tax Letter.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 26th day of December, 2001.

FEDERAL EXPRESS CORPORATION

By _____
Graham R. Smith, Vice President
12/24/01

Approved
Legal Department
T.J. Kwoka 011222

Schedule I

Description of Item (incl. serial #, if applicable)	Location of Item	Dollar Amount	Vendor	Date of Payment	Sales Tax Saving	Total Savings
None						

Schedule II

Project Registry (Facility Equipment)

None

PRELIMINARY SALES TAX CERTIFICATE OF THE DEVELOPER

The undersigned DOES HEREBY CERTIFY THAT he/she is an Authorized Representative (as defined in the Developer Sublease referred to below) of 660 TWELFTH L.L.C. (formerly known as 621 West 48 L.L.C.), a New York limited liability company (the "Developer"), and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered in accordance with the provisions of certain Interim Sublease Agreement (621 West 48th Street) dated as of October 1, 2001 (the "Interim Sublease") by and between the New York City Industrial Development Agency (the "Agency") and the Developer (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Interim Sublease):

1. For the period commencing on the issuance and delivery of the First Preliminary Sales Tax Letter, dated October 1, 2001, as amended and restated (the "Preliminary Sales Tax Letter") and ending on the day preceding the Lease Commencement Date (the "Reporting Period"), Schedule I attached hereto sets forth each Sales Tax Saving availed of by the Developer pursuant to the Preliminary Sales Tax Letter or the Interim Sublease, the dollar amount of same, the date availed of, meaning the date of payment and the specific items of Developer Project Costs to which each shall relate.

2. All of the Sales Tax Savings described in Schedule I were availed of by the Developer in compliance with the provisions of the Preliminary Sales Tax Letter and the Interim Sublease, and no Person other than the Developer realized any such Sales Tax Savings (Developer).

3. Attached hereto as Schedule II is an accurate and complete description of the property comprising the Developer Improvements.

4. As of the end of the Reporting Period, the amount of Remaining Sales Tax Benefits (Developer) is $ see attached.

5. As of the end of the Reporting Period and at all times during such Reporting Period, the Developer was not in default under any of the provisions of the Preliminary Sales Tax Letter and the Interim Sublease. [To the extent that the Authorized Representative of the Developer shall have obtained knowledge or notice of any such default, the certificate shall disclose such default(s) or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under the Interim Sublease, and the action proposed to be taken by the Developer and/or the Company with respect thereto.]

6. No item of Facility Improvement Materials and Base Building Equipment (collectively, the "Developer Improvements") has been removed from the Facility Realty except in accordance with the Interim Sublease.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 26th day of December, 2001.

660 TWELFTH L.L.C.

By: ______________________

PATRICIA O'CONNOR
VICE PRESIDENT

NY:646328.1

Block 1096
IDA TAX BENEFIT FOR FED EX

8-Nov-01
revised 20-Nov-01
revised 20-Dec-01

H:\[660 IDA FED EX tax benefit from contracts.xls]Sheet1												
Phase Code	Description	Subcontractor	Contract Amount	total FED EX sales tax		accrued 9/1 to 9/30		accrued 10/1 to 10/31		accrued 11/1 to 11/31	
General Conditions											
01.410	Testing & Inspection	Ava Shypula Consulting	Per Diem	$0							
01.410	Testing & Inspection	Cantor Seinuk Group	Per Diem	$0							
01.900	Misc. General Conditions	Earl B Lovell-SP Belcher	16,200	$0							
Trades											
02.010	Sub Surface Investigation	Howard Greenspan	5,000	$0							
02.010	Sub Surface Investigation	Jersey Boring & Drilling	30,000	$0							
02.010	Sub Surface Investigation	Warren George	11,594	$0							
02.050	Demolition	A. Russo Wrecking	1,068,158	$0							
02.200	Foundation	Mayrich Construction Corp.	11,450,000	$0	1						
02.200	Foundation	Brookside Environ., Inc.	4,801	$0							
02.800	Site Improvs & Sidewalks	not awarded									
03.300	Concrete Superstructure	Carlton Concrete	3,125,000	$79,050						3,952	
03.400	Precast Concrete	Global Precast	1,275,000	$26,437						6,609	
04.200	Masonry	Metro Masons, Inc	2,700,000	$41,400							
05.120	Structural Steel	Interstate Ironworks	5,899,000	$61,994	2			$ 34,994	3	5,889	
05.500	Miscellaneous Metal	Ment Bro Iron Works Co.	790,000	$14,614							
07.250	Spray-on Fireproofing	Island International	480,000	$10,700							
07.500	Built Up Roofing	Eagle One Roofing	750,000	$19,500							
07.900	Caulking (Joint Sealers)	not awarded									
08.100	Metal Doors & Frames	Long Island Fire Door, Inc.	39,500	$3,048							
08.300	Roll-up Doors	McKeon Rolling Stl Door Co.	175,000	$8,506							
08.410	Alum Entrances & Storefrnt	Coordinated Metals	905,000	$10,525						631	
08.700	Finish Hardware	Long Island Fire Door, Inc.	39,500	$2,744							
08.900	Curtain Wall	Glassalum Intern'l Corp.	184,682	$0							
09.250	GWB & Carpentry	Woodworks Construction	690,000	$10,857							
09.300	Ceramic Tile & Marble	not awarded									
09.650	Resilient Flooring	not awarded									
09.680	Carpet	not awarded									
09.900	Painting	not awarded									
10.430	Signage & Graphics	not awarded									
10.800	Toilet Acc/Partitions & Lockers	A. Liss									
12.500	Window Treatment	not awarded									
14.210	Elevators	Transel Elevator	372,000	$15,345							
14.610	Sidewalk Bridge	United Hoisting	42,000								
15.300	Sprinkler	Rael Automatic Sprinkler	800,000	$9,000							
15.400	Plumbing	Almar Plumbing	1,350,000	$42,300				$ 5,499	3		
15.400	Site Utilities	Todino & Sons	155,000	$1,500				$ 1,335			
15.500	HVAC	Martin Associates	3,800,000	$75,000		$ 1,650	3				
16.050	Electric & Light Fixtures	High Rise Electric	6,503,000	$135,000				$ 10,530	3	8370	
16.050	Electric & Light Fixtures	Welsbach St. light replace	5,846	$0							
Consultants											
17.010	Architect	Vollmer Associates	2,076,066	$0							
17.030	MEP Consultant	Cosentini Associates	53,725	$0							
17.040	Preconstruction Survey	John V. Dinan	34,337	$0							
17.110	Geotechnical Consultant	Mueser Rutlege	16,802	$0							
17.140	Environmental Consultant	AKRF, Inc.	38,445	$0							
17.140	ACM Survey	GCI Environmental	33,637	$0							
17.140	Environmental Consultant	Phillip Habib	45,000	$0							
17.999	Mission Critical Consultant	Einhorn Yaffee Prescott	135,999	$0							
	TOTALS		$ 45,100,291.77	$567,519		$ 1,650		$ 52,358		$25,451	
	cummulative to date									$ 79,459	

Notes

1. Mayrich 95% complete when 10/02/01 sales tax letter sent. IDA/Fed Ex agree not to request sales tax credit for Foundation work prior to 10/02/01 issuance of sales tax letter.
2. Application for rebate of taxes paid prior to issuance of 10/02 sales tax letter by Rockrose.
3. Based on percent of work (excluding engineering) performed.

SALES TAX LETTER (COMPANY)

December 26, 2001

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
Federal Express Corporation 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, including the acquisition of and control over property is exempt from the imposition of any 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 February 13, 2001, the Agency has authorized and pursuant to the terms hereof the Agency does hereby authorize Federal Express Corporation, a corporation organized under the laws of the State of Delaware (the "Company"), to act as its agent for and on behalf of the Agency in connection with the acquisition of machinery, equipment, furniture, furnishings, trade fixtures, and other items of tangible personal property ("Facility Equipment"), all as generally described in and limited as to scope as set forth in Exhibit A attached hereto, and all for use at 621 West 48th Street in New York, New York (the "Project Premises") by the Company (collectively, the "Equipment Project"). The Agency authorizes the Company to use and the Company shall use this letter only for the payment of costs incurred in connection with the Project (as defined herein).

3. The Company agrees that for every purchase made by the Company as agent for the Agency in connection with the Equipment Project, the Company shall receive and/or enter into a written contract, bill, invoice or purchase order containing language in substantially the following form:

> "This [contract or purchase order] is being entered into by or on behalf of Federal Express Corporation, a corporation organized under the laws of the State of Delaware (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 of machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property for use at 621 West 48th Street in New York, New York (the "Project Premises"). The machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property which

is the subject of this [contract, 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 herein, and the Agent hereby represents that this [contract, invoice, bill or purchase order] is in compliance with the terms of this Sales Tax Letter (Company). The liability of the Agency hereunder is limited as set forth in this Sales Tax Letter (Company). By execution or acceptance of this [contract or purchase order], the vendor hereby acknowledges the terms and conditions set forth in this paragraph."

"The vendor represents and warrants that such party is not a Prohibited Person.

The term "Prohibited Person", as used hereinabove, means: (i) any person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively; (ii) any person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or 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; (iii) any government, or any person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof; or (iv) any government, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended)."

4. In the event that a vendor is a Prohibited Person and such vendor or contractor has

made a misrepresentation stating otherwise in a contract, bill, invoice or purchase order entered into by the Company as agent for the Agency, the Company shall not be in default hereunder or under any Project Document unless the Company had actual knowledge that such vendor is a Prohibited Person.

5. The Equipment 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 the Facility Equipment shall have a useful life of one year or more, and shall solely be for the use of the Company and/or its Affiliates at the Project Premises and for no other entity and at no other location, and the purchase of Facility Equipment shall be effected by and at the sole cost of the Company.

6. The Agency shall have no liability, for payment or performance obligations, under any contract, invoice, bill or purchase order entered into by the Company as agent for the Agency hereunder, either directly or indirectly or contingently, 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 (Company), the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this letter by the Company is strictly for the purposes above stated.

8. Accordingly, until the earliest of (i) December 31, 2030, (ii) the actual realization of the Maximum Sales Tax Savings Amount (Company) (as defined in the Lease Agreement) by the Company, (iii) the occurrence of a default by the Company of any of its obligations under any of the Project Documents, (iv) the termination or recession of the Prime Lease, the Company Lease or the Lease Agreement, or (v) such other time as the Agency shall in its sole reasonable discretion, request the Company in writing to stop using this Sales Tax Letter (Company) and return said letter to the Agency, and subject to the continued annual confirmation by the Agency as to the effectiveness of this letter as provided in Exhibit B attached hereto and made a part hereof, all vendors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases of Facility Equipment, to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

9. This letter may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The Agency reserves the right, in its sole reasonable discretion, to suspend or terminate this Sales Tax Letter (Company) and to require that the Company surrender this Sales Tax Letter (Company) to the Agency for suspension or cancellation.

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

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

FEDERAL EXPRESS CORPORATION

By: _____
Name:
Title:

EXHIBIT A

Exemptions from sales or use tax relate to the following:

1. the acquisition of machinery, equipment, furniture, furnishings, trade fixtures and other tangible items of personal property for use at the Project Premises, including mainframe computers (and peripherals), personal or other computers, telecommunication equipment, business machines and software, but excluding art, plants, *objets d'art* and other similar decorative items, rolling stock and ordinary office supplies such as pencils, paper clips and paper;

provided, however, that the purchase of any software under the above categories may only be effected if such software shall be capitalized or capable of being capitalized under generally accepted accounting principles.

EXHIBIT B

ANNUAL CONFIRMATION BY AGENCY OF
EFFECTIVENESS OF SALES TAX LETTER

Annual Period (but not later than that date determined in accordance with paragraph 8 of this letter)	Confirming Agency Signature
December 26, 2001 through June 30, 2002	_____
July 1, 2002 through June 30, 2003	_____
July 1, 2003 through June 30, 2004	_____
July 1, 2004 through June 30, 2005	_____
July 1, 2005 through June 30, 2006	_____
July 1, 2006 through June 30, 2007	_____
July 1, 2007 through June 30, 2008	_____
July 1, 2008 through June 30, 2009	_____
July 1, 2009 through June 30, 2010	_____
July 1, 2010 through June 30, 2011	_____
July 1, 2011 through June 30, 2012	_____
July 1, 2012 through June 30, 2013	_____
July 1, 2014 through June 30, 2015	_____
July 1, 2015 through June 30, 2016	_____
July 1, 2016 through June 30, 2017	_____
July 1, 2017 through June 30, 2018	_____
July 1, 2018 through June 30, 2019	_____
July 1, 2019 through June 30, 2020	_____
July 1, 2020 through June 30, 2021	_____
July 1, 2021 through June 30, 2022	_____
July 1, 2022 through June 30, 2023	_____

July 1, 2023 through June 30, 2024	_____
July 1, 2024 through June 30, 2025	_____
July 1, 2025 through June 30, 2026	_____
July 1, 2026 through June 30, 2027	_____
July 1, 2027 through June 30, 2028	_____
July 1, 2028 through June 30, 2029	_____
July 1, 2028 through December 31, 2030	_____

SALES TAX LETTER (DEVELOPER)

December 26, 2001

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
Federal Express Corporation 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, including the acquisition of and control over property is exempt from the imposition of any 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 February 13, 2001 (the "Authorizing Resolution"), the Agency has authorized and pursuant to the terms hereof the Agency does hereby authorize 660 Twelfth L.L.C. (formerly known as 621 West 48 L.L.C.) (the "Developer"), a limited liability company organized under the laws of the State of New York, for the benefit of Federal Express Corporation (the "Company"), a corporation organized under the laws of the State of Delaware, to act as its agent for and on behalf of the Agency in connection with the acquisition from time to time of construction materials ("Facility Improvements") to be used by the Developer to construct an approximately 241,470 square foot building, and to make capital improvements at, a certain premises to be constructed by the Developer and leased in part to the Company, all to be located at 621 West 48th Street, in New York, New York (such premises and building being referred to as the "Project Building").

3. Pursuant to the Authorizing Resolution, the Agency has authorized the Developer to act as agent for the Agency, for the benefit of the Company, to acquire fixtures, apparatus, systems, machinery and equipment, including elevator, electrical, plumbing and HVAC fixtures, apparatus and systems, and other similar types of fixtures, apparatus, systems, machinery and equipment (the "Base Building Equipment") all as generally described in and limited as to scope as set forth in Exhibit A attached hereto, and all for use at the Project Building. The acquisition and installation of the Project Building and the Base Building Equipment are collectively referred to herein as the "Facility Improvement Project". The Agency authorizes the Developer to use and the Developer shall use this letter only for the payment of costs incurred in connection with the Facility Improvement Project.

4. The Developer agrees that for every purchase made by the Developer as agent for the Agency in connection with the Facility Improvement Project, the Developer shall receive and/or

enter into a written contract, bill, invoice or purchase order containing language in substantially the following form:

[IF WITH RESPECT TO FACILITY IMPROVEMENTS]

"This [purchase order, bill of sale, invoice or contract is entered into by [660 Twelfth L.L.C.] (the "Developer"), a New York limited liability company (the "Agent"), as agent for the New York City Industrial Development Agency (the "Agency") and on behalf of Federal Express Corporation (the "Company"), a Delaware corporation in connection with, from time to time, the acquisition and installation of construction materials to be used by the Developer to construct and make capital improvements at a certain premises to be located at 621 West 48th Street, New York, New York, which premises have been leased, in part, by the Developer to the Company (the "Leased Premises") (the above being part of the "Facility Improvement Project")."

[OR, IF WITH RESPECT TO BASE BUILDING EQUIPMENT]

"This [purchase order, bill of sale, invoice or contract] is entered into by [660 Twelfth L.L.C.] (the "Developer"), a New York limited liability company (the "Agent"), as agent for the New York City Industrial Development Agency (the "Agency") and on behalf of Federal Express Corporation (the "Company"), a Delaware corporation in connection with, from time to time, purchases of machinery and equipment, including elevator, electrical, plumbing and HVAC fixtures, apparatus, systems, and other similar types of fixtures, apparatus, systems, machinery and equipment installed and used at a certain premises to be located at 621 West 48th Street, New York, New York, which premises have been leased, in part, by the Developer to the Company (the "Leased Premises") (the above being part of the "Facility Improvement Project")."

[AND, IN EITHER CASE, ALL OF THE FOLLOWING]

"The vendor or contractor represents and warrants that such party is not a Prohibited Person.

The term "Prohibited Person", as used hereinabove, means: (i) any person (A) that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a person that is in default or in breach, beyond any applicable notice and/or grace period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively; (ii) any person (A) that has been convicted in a criminal proceeding

for a felony or any crime involving moral turpitude or that is an organized crime figure or 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; (iii) any government, or any person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof; or (iv) any government, or any person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended)."

5. In the event that a vendor or contractor is a Prohibited Person and such vendor or contractor has made a misrepresentation stating otherwise in a contract, invoice, bill, or purchase order entered into by the Developer as agent for the Agency, the Developer shall not be in default hereunder or under any Developer Project Document unless the Developer had actual knowledge that such vendor or contractor is a Prohibited Person.

6. The Facility Improvement 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 in the case of Facility Improvements, such improvements shall be effected by and at the sole cost of the Developer, and on the condition that the Facility Improvements and Base Building Equipment be used solely by the Developer at the Project Building and for no other location.

7. The Agency shall have no liability, for payment or performance obligations, under any contract, invoice, bill or purchase order entered into by the Developer as agent for the Agency hereunder, either directly or indirectly or contingently, in any manner and to any extent whatsoever, and the Developer shall be the sole party liable thereunder.

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

9. Accordingly, until the earliest of (i) December 31, 2004, (ii) the Construction Completion Date, (iii) the actual realization of the Maximum Sales Tax Savings Amount (Developer) (as defined in the Sublease Agreement) by the Developer, (iv) the occurrence of a default by the

Developer of any of its obligations under the Amended and Restated Lease Agreement (the "Lease Agreement") or the Amended and Restated Sublease Agreement (the "Sublease Agreement"), each dated as of December 1, 2001, between the Developer and the Agency, or under the Amended and Restated Indemnification Agreement, dated as of December 1, 2001, between the Developer and the Agency, (v) the termination or rescission of the Lease Agreement or the Sublease Agreement, or (vi) such other time as the Agency shall, in its sole reasonable discretion, request the Developer in writing to stop using this Sales Tax Letter (Developer) and return said letter to the Agency, and subject to the continued annual confirmation by the Agency as to the effectiveness of this letter as provided in Exhibit B attached hereto and made a part hereof, all vendors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases of, and contracts relating to, the Facility Improvement Project, to the extent effected by the Developer, as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.

10. This letter may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. The Agency reserves the right, in its sole reasonable discretion, to suspend or terminate this Sales Tax Letter (Developer) and to require that the Developer surrender this Sales Tax Letter (Developer) to the Agency for suspension or cancellation.

The signature of a representative of the Developer where indicated below will indicate that the Developer has accepted the terms hereof.

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

660 TWELFTH L.L.C.

By: _____
Name:
Title:

EXHIBIT A

Exemptions from sales or use tax relate to the following categories:

1. The acquisition of building and construction materials and the making of improvements and renovations to the Project Building; and

2. The acquisition by the Developer of fixtures, apparatus, systems, machinery, and equipment, including elevator, electrical, plumbing and HVAC fixtures, apparatus, systems and other similar types of fixtures, apparatus, systems, machinery and equipment installed at the Project Building and made a part thereof.

EXHIBIT B

ANNUAL CONFIRMATION BY AGENCY OF
EFFECTIVENESS OF SALES TAX LETTER

Annual Period (but not later than that date determined in accordance with paragraph 9 of this letter)	Confirming Agency Signature
December 26, 2001 through June 30, 2002	_____
July 1, 2002 through June 30, 2002	_____
July 1, 2003 through June 30, 2003	_____
July 1, 2004 through December 31, 2004	_____

ANNUAL CERTIFICATE OF THE COMPANY

The undersigned DOES HEREBY CERTIFY THAT he/she is an Authorized Representative (as defined in the Lease Agreement referred to below) of FEDERAL EXPRESS CORPORATION, a Delaware Corporation (the "Company"), and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered in accordance with the provisions of Section 2.5 of that certain Lease Agreement (621 West 48th Street) dated as of December 1, 2001 (the "Lease Agreement") by and between the New York City Industrial Development Agency and the Company (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

1. For the Reporting Period, Schedule I attached hereto sets forth each Sales Tax Saving availed of by the Company pursuant to the Sales Tax Letter (Company) and/or the Lease Agreement, the dollar amount of same, the date availed of, meaning the date of payment and the specific items of Company Project Costs to which each shall relate.

2. All of the Sales Tax Savings described in Schedule I were availed of by the Company in compliance with the provisions of the Sales Tax Letter (Company) and the Lease Agreement, and no Person other than the Company realized any such Sales Tax Savings (Company).

3. Attached hereto as Schedule II are all deletions and additions necessary to cause the Project Registry (Facility Equipment) to be an accurate and complete description of the property comprising the Facility Equipment.

4. As of the end of the Reporting Period, the amount of Remaining Sales Tax Benefits (Company) is $_____ .

5. As of the end of the Reporting Period and at all times during such Reporting Period, the Company was not in default under any of the provisions of the Company Project Documents. [To the extent that the Authorized Representative of the Company shall have obtained knowledge or notice of any such default, the certificate shall disclose such default(s) or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under any of the Project Documents, and the action proposed to be taken by the Company with respect thereto.]

6. No item of Facility Equipment has been removed from the Project Premises, except in accordance with Section 4.2 of the Lease Agreement.

7. The aggregate amount of rentable square feet of each of the Project Premises leased during the Reporting Period to Non-Qualified Users, the name and business operation of each such tenant, the term of each such lease, the percentage of aggregate rentable square feet of the Project Premises so leased to Non-Qualified Users are as follows: _____.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 20____.

FEDERAL EXPRESS CORPORATION

By _____

Schedule I

Description of Item (incl. serial #, if applicable)	Location of Item	Dollar Amount	Vendor	Date of Payment	Sales Tax Saving	Total Savings

Schedule II

Deletions and Additions to Project Registry (Facility Equipment)

Form of Report of Independent Accountant (Company)

Report of Independent Accountants

[Date]

Federal Express Corporation
621 West 48th Street
New York, New York

New York City Industrial
Development Agency
110 William Street
New York, New York 10038

We have performed the procedures enumerated below, which were agreed to by Federal Express Corporation, a Delaware corporation (the "Company"), and the New York City Industrial Development Agency (the "Agency"), to the data set forth in that certain Certificate(s) of the Company dated August 1, _____ (the "Sales Tax Certificate"), and attached Sales Tax Schedule (the "Sales Tax Schedule") solely to assist the Company in complying with Section 2.5 of the Lease Agreement dated as of December 1, 2001, as amended (the "Lease Agreement"), between the Agency and the Company. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We inquired of officials and other personnel of the Company who have responsibility for accounting and financial matters about:

(a) the nature of expenditures and whether such expenditures are of the types as permitted by the Lease Agreement;

(b) whether contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 2.5 of the Lease Agreement; and

(c) whether the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Such officials and other personnel of the Company who have responsibility for accounting and financial matters informed us that:

(a) the expenditures are of the types allowed by the Lease Agreement;

(b) all contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 2.5 of the Lease Agreement, and

(c) the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Our procedures with respect to the data in the Sales Tax Certificate and Sales Tax Schedule were as follows:

(a) We have performed the procedures described below to the accompanying Sales Tax Certificate and Sales Tax Schedule pursuant to Section 2.5 of the Lease Agreement.

(b) We were informed by officials and other personnel of the Company who have responsibility for accounting and financial matters that the accompanying Certificate and Sales Tax Schedule of the Company as required by Section 2.5 of the Lease Agreement, and attached Sales Tax Schedule are presented on the basis prescribed by the Lease Agreement.

(c) We reviewed the contracts, invoices, bills and purchase orders related to each expenditure selected for review in accordance with the sampling procedure described below for the wording required by Section 2.5 of the Lease Agreement.

(d) We recalculated the sales tax exemption set forth in the Sales Tax Schedule by multiplying the expenditure amount per the Sales Tax Schedule by 8.25%.

(e) We recomputed the Sales Tax Savings (Company) (as defined in the Lease Agreement) amounts per the Sales Tax Schedule for the sample of purchase orders and contracts listed below.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Company. Consequently, we make no representations regarding the sufficiency of the following specified procedures for the purpose for which this report has been requested or for any other purpose.

All purchase orders over $100,000 and a random sample of twenty-five (25) additional purchase orders were selected from the Sales Tax Schedule for which the procedures described in steps 1 - 10 below were performed as applicable. The following purchase orders were selected:

Purchase Order Number	Amount
[Insert List]	

1. We compared the purchase order number, year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the purchase order for the sample of purchase orders listed above. We compared the year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the invoice for the contracts included in the sample listed above.

2. For each line description listed on the purchase order or contract for the sample of purchase orders and contracts listed above, we read the item description appearing on a photocopy of the purchase order or invoice to determine that the purchase was indicated as being for the acquisition of machinery, equipment, furniture, furnishings, fixtures and other tangible personal property including: computers and peripherals, personal computers, telecommunications equipment, business machines and software.

3. For the sample of purchase orders and contracts listed above, we read the "deliver to" or "ship to" address appearing on a photocopy of the purchase order, invoice copy or the passive receipt verification notice used by the Company as the receiving document to determine that the purchase was indicated as delivered to the Project Premises.

4. For the sample of purchase orders and contracts listed above, we obtained the photocopy of the purchase order or contract or the photocopy of the file copy of the letter sent to the vendor which included the language substantially in the form required in Section 2.5 of the Lease Agreement.

5. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order, contract or the invoice to determine that the capital machinery, equipment or tangible personal property was indicated to have a useful life of one year or more in accordance with generally accepted accounting principles for each item listed on the purchase order, contract or invoice for the same of purchase orders and contracts listed above.

6. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order or contract to determine if it was indicated as being for computer software. For computer software, we read the photocopy of the purchase order or contract to determine that the software was capable of being capitalized in accordance with generally accepted accounting principles.

7. We obtained representations from management of the Company that the purchased items on the Sales Tax Schedule are solely for the use of the Company or its Affiliates at the Project Premises and for no other entity and at no other location.

8. We obtained a copy of the Agency's annual confirmation of the Sales Tax Letter (Company) through _____.

Our findings were:

a. The description appearing on the invoice indicated that all expenditures were of the type allowed as per the Lease Agreement, except for those items denoted by (*) on the Sales Tax Schedule, and those items denoted by (**) for which we were unable to perform the procedure since no invoice and purchase order were available.

b. All purchase orders contained wording in substantially the form required as noted above.

c. The sales tax exemption set forth in the Sales Tax Schedule was recalculated to be 8.25% of the expenditure amount.

We were not engaged to, and did not, perform an audit, the objective of which would be expression of an opinion on the specified elements, accounts or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Company and the Agency and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Date: _____

Form of Report of Independent Accountant (Developer)

Report of Independent Accountants

[Date]

660 Twelfth L.L.C.
309 East 45th Street
New York, New York 10017

Federal Express Corporation
621 West 48th Street
New York, New York

New York City Industrial
Development Agency
110 William Street
New York, New York 10038

We have performed the procedures enumerated below, which were agreed to by 660 Twelfth L.L.C. (formerly known as 621 West 48 L.L.C.), a New York limited liability company (the "Developer"), and the New York City Industrial Development Agency (the "Agency"), to the data set forth in that certain Certificate(s) of the Developer dated _____ (the "Sales Tax Certificate"), and attached Sales Tax Schedule (the "Sales Tax Schedule") solely to assist (a) the Developer in complying with Section 6.9 of the Amended and Restated Sublease Agreement (621 West 48th Street) dated as of December 1, 2001, as amended (the "Sublease Agreement"), between the Agency and the Developer and (b) the Company in complying with Section 2.5(d)(v)(b) of the Lease Agreement (621 West 48th Street) dated as of December 1, 2001, as amended (the "Lease Agreement"), between the Agency and the Company. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We inquired of officials and other personnel of the Developer who have responsibility for accounting and financial matters about:

(a) the nature of expenditures and whether such expenditures are of the types as permitted by the Lease Agreement;

(b) whether contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 6.8 of the Sublease Agreement; and

(c) whether the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Such officials and other personnel of the Developer who have responsibility for accounting and financial matters informed us that:

(a) the expenditures are of the types allowed by the Sublease Agreement;

(b) all contracts, invoices, bills and purchase orders contained the prescribed wording required under Section 6.8 of the Sublease Agreement, and

(c) the sales tax exemption as set forth in the attached schedule is 8.25% of the expenditure.

Our procedures with respect to the data in the Sales Tax Certificate and Sales Tax Schedule were as follows:

(a) We have performed the procedures described below to the accompanying Sales Tax Certificate and Sales Tax Schedule pursuant to Section 6.8 of the Lease Agreement.

(b) We were informed by officials and other personnel of the Developer who have responsibility for accounting and financial matters that the accompanying Certificate and Sales Tax Schedule of the Developer as required by Section 6.9 of the Sublease Agreement, and attached Sales Tax Schedule are presented on the basis prescribed by the Sublease Agreement.

(c) We reviewed the contracts, invoices, bills and purchase orders related to each expenditure selected for review in accordance with the sampling procedure described below for the wording required by Section 6.8 of the Sublease Agreement.

(d) We recalculated the sales tax exemption set forth in the Sales Tax Schedule by multiplying the expenditure amount per the Sales Tax Schedule by 8.25%.

(e) We recomputed the Sales Tax Savings (Developer) (as defined in the Sublease Agreement) amounts per the Sales Tax Schedule for the sample of purchase orders and contracts listed below.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the Developer. Consequently, we make no representations regarding the sufficiency of the following specified procedures for the purpose for which this report has been requested or for any other purpose.

All purchase orders over $100,000 and a random sample of twenty-five (25) additional purchase orders were selected from the Sales Tax Schedule for which the procedures described in steps 1 - 10 below were performed as applicable. The following purchase orders were selected:

Purchase Order Number	Amount
[Insert List]	

1. We compared the purchase order number, year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the purchase order for the sample of purchase orders listed above. We compared the year of purchase, vendor, and amount per the Sales Tax Schedule to a photocopy of the invoice for the contracts included in the sample listed above.

2. For each line description listed on the purchase order or contract for the sample of purchase orders and contracts listed above, we read the item description appearing on a photocopy of the purchase order or invoice to determine that the purchase was indicated as being for the acquisition Base Building Equipment (as defined in the Sublease Agreement)

3. For the sample of purchase orders and contracts listed above, we read the "deliver to" or "ship to" address appearing on a photocopy of the purchase order, invoice copy or the passive receipt verification notice used by the Developer as the receiving document to determine that the purchase was indicated as delivered to the Project Building.

4. For the sample of purchase orders and contracts listed above, we obtained the photocopy of the purchase order or contract or the photocopy of the file copy of the letter sent to the vendor which included the language substantially in the form required in Section 6.8 of the Sublease Agreement.

5. For the sample of purchase orders and contracts listed above, we read the item description on the photocopy of the purchase order, contract or the invoice to determine that the Base Building Equipment was indicated to have a useful life of one year or more in accordance with generally accepted accounting principles for each item listed on the purchase order, contract or invoice for the same of purchase orders and contracts listed above.

6. We obtained representations from management of the Developer that the purchased items on the Sales Tax Schedule are solely for the use of the Developer at the Project Building and for no other entity and at no other location.

8. We obtained a copy of the Agency's annual confirmation of the Sales Tax Letter (Developer) through _____.

Our findings were:

a. The description appearing on the invoice indicated that all expenditures were of the type allowed as per the Sublease Agreement, except for those items denoted by (*) on the Sales Tax Schedule, and those items denoted by (**) for which we were unable to perform the procedure since no invoice and purchase order were available.

b. All purchase orders contained wording in substantially the form required as noted above.

c. The sales tax exemption set forth in the Sales Tax Schedule was recalculated to be 8.25% of the expenditure amount.

We were not engaged to, and did not, perform an audit, the objective of which would be expression of an opinion on the specified elements, accounts or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Developer, the Company and the Agency and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Date: _____

20-- subtenant survey

Federal Express Corporation
621 West 48th Street
New York, New York

In order to verify compliance with your IDA transaction documents, please complete the information requested below for each and every subtenant occupying space in your facility of **January 1, 200____**.

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

Subtenant	Floor	Square Footage Leased	Lease Begins	Lease Ends

I, the undersigned, hereby certify to the best of my knowledge and belief that the information reported above is true, correct and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number _____

Please **fax** the **completed form** to:

New York City Industrial Development Agency
Compliance Unit
212-312-3918

HelpLine: 212-312-3968

Annual Employment Report

For the Year Ending June 30, ____

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

Federal Express Corporation
621 West 48th Street
New York, New York

Telephone # _____

Tax ID # _____

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

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

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

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

Signature _____ **Date** _____

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

PLEASE FAX YOUR RESPONSE TO 212-312-3918

New York City Industrial Development Agency Sales Tax Exemption Benefit Registry

Payment Date	Vendor Name	Unit Location @ Project Premises	Unit Description	Serial #	Unit Cost	# of Units	Total Cost	Sales Tax Savings*
M/D/Y					$		$	$
M/D/Y					$		$	$
M/D/Y					$		$	$
M/D/Y					$		$	$
M/D/Y					$		$	$

TOTAL COST FOR REGISTRY: $

TOTAL SALES TAX SAVINGS FOR REGISTRY: $

DISCOUNT RATE PERCENTAGE:
*%****

ST-340

New York State Department of Taxation and Finance

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

For Period Ending December 31, _____

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	Project number
Street address of project site	
City State Zip code	

1. Project purpose: 0 Services 0 Construction 0 Agriculture, forestry, fishing
   0 Wholesale trade 0 Retail trade 0 Finance, insurance or real estate
   0 Transportation, communication, electric, gas or sanitary services
   0 Manufacturing 0 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 / DD / 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.**

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): 1 800 634–2100 (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.

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.

CONSTRUCTION COMPLETION CERTIFICATE

The undersigned, an Authorized Representative (as defined in the Developer Sublease referred to below) of 660 Twelfth L.L.C. (formerly known as 621 West 48 L.L.C.), a limited liability company organized and existing under the laws of the State of New York, party of the second part (the "Developer"), HEREBY CERTIFY that this Certificate is being delivered in accordance with the provisions of Section 2.2(c) of the Amended and Restated Developer Sublease Agreement (621 West 48th Street), dated as of December 1, 2001 (the "Developer Sublease"), between the New York City Industrial Development Agency (the "Agency") and the Developer and Section 5(j) of the Overlease Agreement (621 West 48th Street), dated as of December 1, 2001 (the "Overlease Agreement"), between the Agency and the Developer, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Developer Sublease and the Overlease Agreement):

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

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

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

the Agency has good and valid fee title to the Agency Owned Facility Realty and valid leasehold title to the Developer Owned Facility Realty, and all property constituting the Project Premises;

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

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

attached hereto are (a) releases of mechanics' liens by the general contractor, (b) a temporary or permanent certificate of occupancy, (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Project Building for the purposes contemplated by the Developer Sublease Agreement, and (d) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due with respect to the Project Building have been paid in full.

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

660 TWELFTH L.L.C.

By:_____