

Lease Agreement

LEASE AGREEMENT

Dated as of October 1, 2006

by and between

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

and

FEDERAL EXPRESS CORPORATION

2006 Federal Express Corporation (Leroy Street Project)

Affecting the Land generally known by the street address
148 Leroy Street, New York, New York
in the County of New York
City and State of New York
as more particularly described in
Exhibit A to this Lease Agreement
and which is also known as Block 601, Lot 13
on the Official Tax Map of New York County

Record and Return to:
WINSTON & STRAWN LLP
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**, made and entered into as of October 1, 2006 (this "Agreement"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), party of the first part, having its principal office at 110 William Street, New York, New York 10038, and **FEDERAL EXPRESS CORPORATION**, a corporation duly organized and existing under the laws of the State of Delaware and qualified to business in the State of New York (the "Company"), party of the second part, having its principal office at 3680 Hacks Cross Road, Building H, Memphis, Tennessee 38125.

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company to commence the improvement and equipping of a commercial facility "a project" within the meaning of the Act within the territorial boundaries of The City of New York, consisting of the improvement and equipping of an existing approximately 49,373 square foot distribution facility located on an approximately 24,677 square foot parcel of land generally known as and by the street address of 148 Leroy Street, in New York, New York (the "**Land**") and otherwise described in Exhibit A attached hereto, and the construction and equipping of an approximately 10,000 square foot addition thereto, all for use by the Company in its parcel shipping business (collectively, the "**Project**"); and

WHEREAS, the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the "**Facility**"; and

WHEREAS, to facilitate the Project, the Agency and the Company have entered into negotiations to enter into a “straight-lease transaction” within the meaning of the Act in which the Agency will acquire a leasehold interest in the Facility and the Agency will lease its interest in the Facility to the Company pursuant to this Agreement, and, in furtherance of such purposes, on June 13, 2006, the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the acquisition of a leasehold estate to the Facility by the Agency and the lease of the Facility by the Agency to the Company; and

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

WHEREAS, on the date hereof, the Company has conveyed, or caused to be conveyed, to the Agency pursuant to a Company Lease Agreement (the “**Company Lease**”), dated the date hereof, a good and valid leasehold estate in the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof;

WHEREAS, pursuant to this Agreement, the Agency will lease to the Company the Agency’s interest in the Facility;

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

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

An **Affiliate** of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term

“control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

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

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

Approved Facility shall mean a commercial facility for use by the Company in its parcel shipping business.

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

Authorizing Resolution shall mean the resolution adopted by the Agency on June 13, 2006, authorizing among other things, the undertaking of the Project, the acquisition of a leasehold estate in the Facility by the Agency and the lease of the Facility by the Agency to the Company.

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

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

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

Commencement Date shall mean October 10, 2006 on which date this Agreement was executed and delivered.

Company shall mean Federal Express Corporation, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, qualified to do business in the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

Company’s Property shall have the meaning specified in Section 4.1(c) hereof.

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

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

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

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

Expiration Date shall have the meaning ascribed to such term in Section 3.2 hereof.

Facility shall have the meaning set forth in the recitals hereof.

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

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

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

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

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.

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

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency.

Land shall mean those certain lots, pieces or parcels of land generally known by the street address 148 Leroy Street, New York, New York 10014, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

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

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

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

Opinion of Counsel shall mean a written opinion of Stadtmauer Bailkin LLP, or such other counsel for the Company reasonably acceptable to the Agency.

Permitted Encumbrances shall mean:

- (i) the Company Lease and this Agreement;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility Equipment or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;
- (v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially interfere with or impair the Company's use and enjoyment of the Facility as herein provided;

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

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

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

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

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

Project shall mean the acquisition of a leasehold estate in the Land by the Agency and the construction and installation of the Improvements and the Facility Equipment thereon or therein by the Company, all for use by the Company as an Approved Facility.

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

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

Project Documents shall mean the Company Lease, this Agreement, the Guaranty Agreement, and the Sales Tax Letter.

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

Sales Taxes shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

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

State shall mean the State of New York.

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

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

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

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

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

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

Section 1.4. Findings by Agency. The Agency, based upon the representations and warranties of the 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 affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that

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

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

State (but outside of the City);

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

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

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

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State Delaware, qualified to do business in the State of New York, is not in violation of any provision of its certificate of organization or operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party. The Company is duly qualified to do business in every jurisdiction in which such qualification is necessary.

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

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

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

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the

Company through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Company to proceed with the Project.

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

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

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

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

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

(k) The Company is in compliance, and will continue to comply, with all Legal Requirements.

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

(m) The moneys available to the Company, are sufficient to pay all costs in connection with the completion of the Project.

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

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

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

(r) The aggregate rentable square footage of the Improvements constituting part of the Facility will be approximately 59,373 square feet upon completion of the Project and the aggregate square footage of the Land is approximately 24,677 square feet.

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

ARTICLE II

LEASEHOLD TRANSFER TO THE AGENCY; THE PROJECT; AND LEASEHOLD TITLE INSURANCE

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

Section 2.2. The Project. The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring the Land and acquiring the Improvements and the Facility Equipment thereon or therein, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in undertaking the Project from funds made available therefor in accordance with or as contemplated by this Agreement, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Company unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by October 1, 2007 and that such completion will be effected in a first class workmanlike manner, using appropriate materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement, provided, however, the Company may revise the scope of the Project, subject to the prior written consent of the Agency. The cost of the Project shall be financed from funds of the Company to the extent such funds shall be necessary to cover costs of the Project which exceed such other sources of funds. In the event that moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Company shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Company be entitled to any diminution of the Rental Payments to be made under

this Agreement.

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

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

The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Company, in the form attached as Schedule E hereto. Such certificate of the Authorized Representative of the Company shall be accompanied by (i) a temporary or permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Company that all costs of the Project have been paid in full, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project; (iii) the Final Project Cost Budget together with evidence reasonably satisfactory to the Agency that at least ten percent (10%) of the aggregate costs of the Project were paid from equity funds of the Company; (iv) evidence satisfactory to the Agency that all real property taxes and assessments and payments in lieu of taxes, if any, due and payable under Section 4.3 hereof, in respect of the Facility have been paid in full; (v) a survey of the Land and Improvements prepared by a licensed surveyor at the Company's sole cost and expense, which survey shall (1) be certified to the Agency, the Company, the title insurance company, (2) locate the Improvements constructed as part of the Facility without any encroachment by any Improvements on premises adjoining the Land (except as shown on the survey delivered to the Agency on the Commencement Date, (3) show the location of all Improvements constituting part of the Facility within lot and building lines in compliance with the applicable zoning requirements, and (4) indicate all rights of way and rights of others of record with respect to the Facility; and (vi) a final endorsement to the leasehold title insurance policy theretofore delivered under Section 2.3 hereof, indicating that since the issuance of the leasehold title insurance policy there has been no change in the state of title and no survey exceptions not theretofore approved by the Agency, which endorsements shall contain no exception for inchoate mechanic's liens (with such affirmative insurance relating thereto as the Agency shall reasonably require) and shall have the effect of redating such policy to the date of completion. Upon request by the Agency, the Company shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

In the event that the aggregate costs of the Project upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than

a ten percent (10%) difference in either total Project costs or in major categories of Project cost), on request of the Agency, the Company shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy, and that the scope of the Project as originally approved by the Agency has not been modified in a material manner without the prior written consent of the Agency.

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

Section 2.4. Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Eligible Materials effected by the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment, other than the Facility Equipment, or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Company shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earliest of (i) October 1, 2007, (2) the completion of the Project as provided in Section 2.2 hereof; (3) the termination of this Agreement, or (4) the termination of the Sales Tax Letter pursuant to the terms thereof or pursuant to the terms thereof or pursuant to Section 7.2(c) hereof.

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

"This contract is being entered into by Federal Express Corporation, a New York corporation (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, consisting of the improvement and equipping of an approximately 50,000 square foot distribution facility located at 148 Leroy Street, in New York, New York, being Block 601, Lot 13 on the Official Tax Map of New York County, and the construction and equipping of an approximately 10,000 square foot addition thereto (the "Facility"), all to be used by the agent in its parcel shipping business (collectively, the "Project"), for lease to the Agency and lease back to the Agent. The Facility Equipment and improvements to be used for the Project and incorporated as building materials in the Project building 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 purchased or used 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 the terms and conditions set forth in this paragraph.”

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

(c) On the Commencement Date, the Agency shall make available to the Company the Sales Tax Letter. 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 Letter) as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Company pursuant to this Agreement and the Sales Tax Letter shall be limited as set forth below:

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) October 1, 2007 (2) the completion of the Project as provided in Section 2.2 hereof; (3) the termination of this Agreement, or (4) the termination of the Sales Tax Letter pursuant to the terms thereof or pursuant to Section 7.2(c) hereof.

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

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

(A) shall not be available for payment of any costs other than the costs of Eligible Materials for incorporation into the Facility Realty,

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

(C) shall not be available for any item of building materials which is not to be incorporated as part of the Improvements,

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

(E) shall be available only if purchased by the Company as agent for the Agency for use by the Company at the Facility Realty,

(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 the Sales Tax Letter.

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

(v) Upon request by the Agency with 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 Sales Tax Letter and the dates and amounts so utilized.

(vi) The Company shall use its best efforts to obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Company to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Letter for any purpose other than for the acquisition of Eligible Materials for incorporation into the Project.

(d) The Company shall observe and comply with the terms and conditions of the Sales Tax Letter.

(e) The Company shall on February 1, 2007 and on each February 1 thereafter until the February 1 following the expiration or termination of the Sales Tax Letter, file a statement with the New York State Department of Taxation and Finance on a form (Form ST-340 attached hereto as Schedule D or any successor or additional mandated form), and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, with a copy thereof to the Agency, of the value of all sales and use tax exemptions (the "Sales Tax Savings") claimed by the Company or agents of the Company in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Company by the Agency which is in the Company's possession or in the possession of any agent of the Company. Nothing herein shall be

construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) The Company shall submit to the Agency on August 1, 2007 and each August 1 thereafter, until completion of the Project, a completed Benefits Report in the form of Schedule B attached hereto to the extent that the Company shall have received Sales Tax Savings during the twelve-month period ending on the June 30 immediately preceding such August 1.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1. Lease of the Facility. (a) The Agency hereby leases to the Company, and the Company hereby leases from the Agency, the Facility for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Company, and the Company hereby accepts, sole and exclusive possession of the Facility.

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

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on July 1, 2032, or such earlier date as this Agreement may be terminated as hereinafter provided (such earlier date hereinafter referred to as the "Expiration Date").

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

(b) Additional Rent. Throughout the term of this Agreement, the Company shall pay to the Agency (except as otherwise provided in Section 4.3 hereof) 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. Rental Payments Payable Absolutely Net. The obligation of the Company to

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

Section 3.5. Nature of Company's Obligation Unconditional. The Company's obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, and irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency or any other Person and the obligation of the Company shall arise whether or not the Project has been completed as provided in this Agreement. The Company will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Company hereunder for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental 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 the Facility in good and safe operating order and condition, ordinary wear and tear excepted; will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement; and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Company at the Facility shall not be impaired or diminished in any way. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Company hereby agrees to assume full responsibility therefor.

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

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

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

(iii) such additions or alterations are promptly and fully paid for by the Company in

accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iv) if the cost of such additions or alterations is estimated to exceed \$250,000, such alterations or additions shall be conducted only after either the Company shall have furnished to the Agency either a guaranty by the contractor or a labor and materials payment bond, or other security, satisfactory to the Agency, and

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

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

(c) The Company shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at the Company's own cost and expense (collectively, the "Company's Property") without conveying title to the Company's Property to the Agency or subjecting the Company's Property to this Agreement. The Company's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Company's Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company's Property, without the consent of or notice to the Agency.

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

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

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

placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

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

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

Section 4.3. Payment in Lieu of Real Estate Taxes

(a) *Description and Address of Project:*

The Project consists of the improvement and equipping of an approximately 50,000 square foot distribution facility and the construction and equipping of an approximately 10,000 square foot addition thereto, to be used by the Company in its parcel shipping business. The Facility Realty is located at 148 Leroy Street, New York, New York, being Block 601, Lot 13 on the Official Tax Map of New York County.

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

Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Company shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Agency had no interest in or control over the Facility Realty.

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

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property under its jurisdiction or control or supervision or upon its activities. The Agency and the Company agree, however, that the Company shall be required to make payments in lieu of real estate taxes in accordance with the provisions of Section 4.3(g) hereof, with respect to the Facility Realty as follows: (i) with respect to the Land, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements, in the amounts as determined in subsections (e) and (f) below.

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

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

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

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

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) June 30, 2032 (the "Expiration Date"), or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the date this Agreement is terminated, if terminated prior to the Expiration Date (such earliest date being the "Termination Date"), the Company shall make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) but only to the extent that Full Land Taxes (as defined below) shall exceed the Maximum Land Tax Abatement for the City Tax Fiscal Year in question:

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2028	\$35,500
July 1, 2028 - June 30, 2029	\$28,400
July 1, 2029 - June 30, 2030	\$21,300
July 1, 2030 - June 30, 2031	\$14,200
July 1, 2031 - Expiration Date	\$7,100

"PILOT Commencement Date" shall mean July 1, 2007.

"City Tax Fiscal Year" shall mean each annual period commencing on July 1, and ending on the immediately succeeding June 30, or such other annual period as shall be established by lawful authority as the City's "tax fiscal year" or its equivalent.

"Full Land Taxes" shall mean that amount of taxes with respect to the Land as the Company would otherwise be required to pay from time to time if the Agency had no leasehold or other interest in or control over the Land.

For the period commencing on Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in or control over the Facility Realty, the Company shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

If the Termination Date has occurred for reasons other than the Agency no longer having a leasehold estate in the Facility Realty, for the period commencing on such Termination Date until the date on which the Agency no longer has a leasehold estate in or control over the Facility Realty, the Company shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.

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

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

- (1) from the PILOT Commencement Date through June 30, 2028, an amount equal to the lesser of CRET or STRET; and
- (2) from July 1, 2028, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	COMPANY PAYS:
July 1, 2028- June 30, 2029	STRET + [(CRET less STRET) x 0.2]
July 1, 2029- June 30, 2030	STRET + [(CRET less STRET) x 0.4]
July 1, 2030- June 30, 2031	STRET + [(CRET less STRET) x 0.6]
July 1, 2031- June 30, 2032	STRET + [(CRET less STRET) x 0.8]

provided, however, with respect to this subsection "B," if for any City Tax Fiscal Year CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall be an amount equal to CRET.

Certain terms used in this Section 4.3 with respect to the Improvements shall be defined as follows:

CRET or "Current Real Estate Taxes" shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements, *and*
- (II) the City's then-current real estate tax rate;

provided, however, that as defined herein, CRET shall not take into account, or in any way be reduced by, any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

STRET or "Stabilized Real Estate Taxes" shall mean the CRET applicable on the Commencement Date.

ICIP or the "Industrial and Commercial Incentive Program" is the program, including any successor program, administered by the New York City Department of Finance (or successor agency) for the exemption from New York City real property taxes of eligible industrial or commercial improvements to real property.

ICIP Exemption shall mean the exemption, from New York City real property taxes, of assessed valuation of industrial or commercial improvements that are eligible under ICIP.

ICIP Abatement shall mean the abatement of New York City real property taxes with respect to eligible industrial or commercial improvements under ICIP.

If the Termination Date has occurred for reasons other than the Agency no longer has a leasehold interest in or other controlling interest in the Facility Realty, for the period commencing on such Termination Date until the date on which the Agency no longer owns a leasehold estate or other controlling interest in the Facility Realty, the Company shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

(f) *Subsequent Alterations and Improvements:*

If, at any time after the Operations Commencement Date (as such term is defined in Section 8.5(ii) hereof), the Company shall make any alterations of or additions to the Improvements (“Additional Improvements”), the Company shall: (i) notify an Authorized Representative of the Agency of such Additional Improvements by (y) delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements, and (z) providing requested information about such Additional Improvements on the Employment and Benefits Report set forth in Schedule A hereto; and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

- (1) the increase in the assessed value of the Improvements as first assessed upon completion of the Additional Improvements and which are attributable to such Additional Improvements, *less* such portion of that incremental assessed value that may be exempt by operation of an ICIP Exemption (if any), *and*
- (2) the City’s real property tax rate prevailing at the time of such first assessment.

The product of “(1)” and “(2)” immediately hereinabove shall be added to STRET and the resulting sum shall be deemed the new STRET for purposes of subsection (e) of this Section 4.3; *provided, however*, that if a reduction in the incremental assessed value corresponding to an ICIP Exemption is applicable, then, as the amount of that reduction diminishes over time (in accordance with the schedule of the applicable ICIP Exemption), the new STRET will correspondingly increase. In no event shall the new STRET in any way take into account or be reduced by any tax exemption and/or abatement program of whatever nature, including but not limited to ICIP.

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Company agrees to pay on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency, or at such other times, in either case as the Agency may designate from time to time by written notice to the Company, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment into a special trust fund.

It is agreed that the Agency shall request the appropriate officer or officers of the City charged with the duty of levying and collecting real estate taxes, to submit to the Company at the times the levies for such real estate taxes are made, a statement specifying the amounts and due dates for the

payments in lieu thereof, so that the Company may make such payments in the correct amounts and on a timely basis.

If the Company shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Company until fully paid and the Company agrees to pay the same to the Trustee together with the lesser of (x) the maximum amount of interest thereon permitted by law and (y) the greater of (i) interest thereon at the same rate per annum from time to time and compounded at the same frequency as if such amounts were delinquent taxes and (ii) a late payment fee of 5% of the amount that was not paid when due and, for each month or part thereof that a payment is delinquent beyond the first month, an additional late payment fee of 1% per month on an amount equal to the original amount that was not paid when due that remains unpaid during such month or part thereof.

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

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date that the Agency shall no longer have a leasehold interest in the Facility Realty. Subject to the paragraph immediately succeeding, the Company and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such termination or cessation of the Agency's leasehold interest occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such termination or cessation of the Agency's leasehold interest.

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

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

The Company understands and agrees that the Company is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Company would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, used and/or occupied by any other Person other than the Company, for so long as such use and/or occupation shall continue. The Company represents to the Agency that no portion of the Facility Realty is used and/or occupied, or is intended to be used and/or occupied, by Persons other than the Company or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Company agrees that if ever during the term of this Agreement the Company ever intends to permit any Person other than itself to use and/or occupy a part of the Facility Realty, then, in such event, the Company shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

The Company further agrees to furnish the Agency, in substantially the form provided in Schedule C attached hereto, with a certificate of an Authorized Representative of the Company on

January 1 of each year setting forth inter alia, all Persons other than the Company or Affiliates of the Company, if any, that shall be utilizing or occupying any portion of the Facility Realty.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Agreement or upon the occurrence of an Event of Default under this Agreement, the Company shall be required to make payments in lieu of real estate taxes on the Land and Improvements constituting a part of the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Agency had no leasehold interest in or control over the Facility Realty.

(j) *QEZE Tax Credits:*

Notwithstanding the provisions of subsections (d), (e) and (f) of this Section 4.3, if at any time during the term of this Agreement (x) the Land is located in an Empire Zone, and (y) the Company is or has taken affirmative steps to become a Qualified Empire Zone Enterprise ("QEZE"), and (z) the Company has qualified or expects to qualify for QEZE tax credits, then, the Company shall make payments in lieu of real estate taxes for the current year and each successive year equal to the following amounts: (i) with respect to the Land, Full Land Taxes; and (ii) with respect to the Improvements, Adjusted CRET. In the event the State repeals the Empire Zone program, or that part of it providing for QEZE tax credits, and as a result of such repeal or as a result of the expiration of the period of the Company's entitlement to QEZE benefits, the Company is no longer eligible to claim the QEZE tax credits as they are available under current law, the Company shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections (d), (e) and (f); *provided, however*, that for any period during which the Company receives QEZE tax credits, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections (d), (e) and (f), shall apply.

(k) *Survival of Obligations:*

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

Section 4.4. Taxes, Assessments and Charges. The Company shall pay when due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Company in the Facility, or the Rental Payments or other amounts payable hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall promptly forward to the 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.

In the event the Facility is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's leasehold interest in or control over the Facility, the Company shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Agency had no

leasehold interest in or control over the Facility.

Section 4.5. Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Company shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (g) of this Section 4.5, include, without limitation (hereinafter: "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction of the Facility, to the extent not covered by the commercial general liability insurance referred to below, owners and contractors protective liability insurance for the benefit of the Institution and the Agency in a minimum amount of \$5,000,000 for the Facility (or such lesser amount agreed upon by the Agency upon written request by the Institution) aggregate coverage for bodily and personal injury and property damage;

(ii) Commercial General Liability insurance (including contractual liability coverage, together with any Umbrella Liability insurance), naming the Company as primary insured, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate (or if the Facility is covered by a multi-site policy, such multiple of that minimum through excess coverage as is satisfactory to the Agency), which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof (other than the liability pursuant to Section 6.2(a)(i) or (v) hereof, and with respect to Section 6.2(a)(vi) hereof, only to the extent such insurance is reasonably available), and (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate, **provided, however,** that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or deductible amount, except as may be otherwise approved in writing by the Agency in its sole discretion;

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

(iv) During any period of construction, renovation, improvement or reconstruction of any of the Facility, the Company shall cause its general contractor to maintain liability insurance as a primary insured, and naming the Company and the Agency as additional insureds, in a minimum amount of \$5,000,000 (or such lesser amount agreed upon by the Agency upon written request by the Developer) on a "per project aggregate limit" (or any functional equivalent) for bodily and personal injury claims, which insurance shall also cover claims against the Company, and/or the Agency for negligence by a contractor and for negligence of subcontractors hired by the contractor or subcontractors, and for any vicarious liability of the Company and/or the Agency arising from such contractor's or subcontractor's negligent activity; and

(v) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require as set forth in a written notice from an

Authorized Representative of the Agency submitted to an Authorized Representative of the Company.

(b) Specific Coverage required by Section 4.5(a) above shall be procured from and maintained with financially sound and generally recognized responsible insurance companies admitted in the State and authorized to write such insurance in the State, or as otherwise approved by the Agency, and having an A.M. Best rating that is commercially reasonable and customarily required by other enterprises of like size and type as that of the Company. The Agency may change such rating requirements on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage.

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

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

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

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

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

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

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

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

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

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Company, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency (A) a broker's certificate of coverage and (B) a certificate of liability insurance, evidence of property insurance, and (ii) as soon as practicable thereafter duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.5. At least seven (7) days prior to the expiration of any such policy, the Company shall furnish to the Agency (i) evidence that such policy has been renewed or replaced for a period of not less than one (1) year, and (ii) an original certificate of insurance evidencing insurance in the form and in the amounts required by this Section 4.5.

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

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

(h) At least ten (10) days prior to the date on which the Company intends to commence the construction, renovation, improvement or reconstruction of the Facility, the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company, certifying such date, together with evidence of the insurance required by Section 4.5(a)(iv) hereof.

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

Section 4.7. Compliance with Law. The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, the Project, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including without limitation zoning variances, special exception and non-conforming

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

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

(b) If a Loss Event shall occur, the Company shall

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

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

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

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

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

Agreement,

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

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

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

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Company stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has a good and valid leasehold estate in all property constituting part of the Facility and all property of the Facility is subject to this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Company will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that has been filed against the Facility no mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exists no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

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

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

(g) The Company shall be entitled to any insurance proceeds, condemnation awards, compensation or damages attributable to the Company's Property.

(h) The Company hereby waives the provisions of Section 227 of the New York Real

Property Law or any law of like import now or hereafter in effect.

ARTICLE VI

PARTICULAR COVENANTS

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

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

(c) Nothing in this Section 6.1 is intended to prohibit any individual who shall own voting stock or other equity interest in the Company from effecting a transfer of voting or equity interest in the Company to members of his or her immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, provided however, no such transfer shall relieve such individual from his or her obligations, if any, under the Guaranty Agreement.

Section 6.2. Indemnity. (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses

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

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

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge and based on information included in the Phase I Environmental Site Assessment Report prepared by Brown & Caldwell (the "**Environmental Auditor**"), dated September 28, 2005, true and complete copies of which the Company has delivered to the Agency (collectively, the "**Audit**"), no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Company shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Company shall comply with and use its best efforts to ensure

compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however,** that if any such tenant or subtenant shall be an Affiliate of the Company, the obligation of the Company with respect to such Persons shall be absolute and not limited to best efforts. The Company shall (i) conduct and complete or cause to be conducted or completed, all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

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

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

(e) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available). Anything to the contrary in this Agreement notwithstanding, the covenants of the 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 the Agency relating to the enforcement of the provisions herein specified.

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

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

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

On the date of execution of this Agreement, the Company shall pay to the Agency, and the Agency acknowledges receipt of, an initial financing fee in the amount of \$67,500, of which \$2,500 of such fee has been received by the Agency prior to the date hereof as an application fee to the Agency. The Company further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$800 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2005) payable upon the Commencement Date and on every anniversary of the Commencement Date until the termination of this Agreement.

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

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

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

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

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

Section 6.5. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency or the Company, or against any of the Rental Payments payable under this Agreement or the interest of the Agency or the Company under this Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the 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 Facility.

(b) The Company may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Company or against any of the Rental Payments payable under this Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) none of the Company or the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Company shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the leasehold title insurance policy referred to in Section 2.3 hereof), so long as the Company shall pay the Rental Payments payable by it under this Agreement and shall duly

observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Company, and the Agency (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 6.7. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ANY SUBLESSEE OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, AND ANY SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY AND ANY SUBLESSEES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

(b) At the request of the Agency, the Company shall deliver to the Agency (i) a certificate of an Authorized Representative of the Company as to whether or not, as of the close of the immediately preceding calendar year, and at all times during such year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he or she shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto; and (ii) a certificate of an Authorized Representative of the Company that the insurance he maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Company either stating that to the knowledge of such Authorized

Representative after due inquiry, no default under or breach of any of the terms hereof which, with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Company shall immediately notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document of which he has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the 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 on the notice.

Section 6.9. Employment Information, Opportunities and Guidelines. (a) Annually, by August 1 of each year until the termination of this Agreement the Company shall submit to the Agency an employment report relating to the period commencing September 1 of the previous year and ending August 31 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the Company and shall attach thereto a copy of the Company's final payroll report evidencing the total number of employees employed by the Company during such reporting period.

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

(c) The 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 48 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 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 48 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 any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local

Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

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

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

shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Company in the Facility or this Agreement, except for Permitted Encumbrances.

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

Section 6.14. Subtenant Survey. The Company shall file with the Agency by January 1 of each year commencing January 1, 2007, a certificate of an Authorized Representative of the Company with respect to all tenancies in effect at the Facility Realty, in the form of the Subtenant Survey attached hereto as Schedule C.

Section 6.15. Contact Information Form. The Company shall file with the Agency by July 31 of each year commencing July 31, 2007, the Location and Contact Information Form set forth in Schedule F hereto.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b) (i) Failure of the Company to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 7.6, 8.4, 8.5, 9.3

or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency;

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

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

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

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

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

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

(j) The Company fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.5 or 2.6 of the Guaranty and such failure continues for a period of thirty (30) days after receipt by the Company of written notice (which shall be deemed given upon receipt of registered or certified mailing or facsimile transmission when receipt is confirmed orally or in writing) specifying the nature of such default or failure from the Agency.

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 the Company Lease and this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of the Company Lease and 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; or

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

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

(d) The Agency may require the Company to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount which the Company would otherwise be required to pay if the Agency had no interest in or control over the Facility Realty; or

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

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from the Company's obligations hereunder, including without limitation, the obligations of the Company under Sections 4.3 (until such time as the Company shall again pay taxes as the record owner of the Facility Realty) 6.2, 8.4, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

Section 7.3. Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the 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 a 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 on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1. Option to Purchase Agency's Leasehold Interest in Facility and to Terminate Agreement. (a) The Company shall have the option to purchase the Agency's interest in the Facility and to terminate this Agreement on any date during the term hereof by paying all Rental Payments due hereunder. The 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 are to be made. In addition, the Company shall purchase the Agency's interest in the Facility on the scheduled expiration date of this Agreement by paying on such date any and all Rental Payments then due hereunder.

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

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

Section 8.2. Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's leasehold interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Company, at the sole cost

and expense of the Company all necessary documents releasing and conveying to the Company all of the Agency's rights and interests in the Facility and to any rights of action (other than as against the Company or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Sections 4.3, 6.2, 8.4, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3. Reserved.

Section 8.4. Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the Expiration Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Company or any successor thereto shall terminate this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Company execute a deliver a termination agreement, in a form acceptable to the Agency, and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Company under Sections 4.3, 6.2, 8.4, 8.5, and 9.13 hereof.

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

(i) If there shall occur a Recapture Event during the Recapture Period (as those terms are defined below), but such Recapture Event is prior to the Operations Commencement Date (defined hereinbelow), the Company shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits (as defined below); and (ii) interest described in subsection (ii)(c) and (if applicable) (d) immediately below.

(ii) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the date on which the Project shall have been substantially completed (which shall be the earlier of (y) the completion date set forth in Section 2.2 hereof, or (z) the date stated in the certificate of an Authorized Representative of the Company delivered to the Agency pursuant to Section 2.2 hereof)(such earlier date to be referred to as the "**Operations Commencement Date**"), the Company shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

(a) If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.

(b) If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits; (where "X" is a per cent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

(c) The principal of the Benefits to be recaptured, whether pursuant to (a) or (b) above, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Company, through and including the date of the Agency's demand; such that (x) Benefit principal comprising mortgage recording taxes shall be deemed to have accrued to the Company on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Company on each date upon which the Company shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax savings shall be deemed to have accrued to the Company on each date upon which such sales and/or use tax saving shall have been exempted by reason of the use by the Company of the Sales Tax Letter, provided, however, that if the Company cannot establish to the Agency's satisfaction the applicable date of receipt, the Agency shall deem the date of receipt (and therefore the date on which the Benefit principal accrued) to be the first day of the calendar year for which exemption was reported by the Company to the State Department of Taxation and Finance on Form ST-340, or, if the Company shall have failed to file Form ST-340, the Commencement Date.

(d) In addition to the interest payable pursuant to "c" preceding, the principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, and whether related to real estate tax savings or not, if not paid to the Agency upon demand, shall from the date of demand bear interest calculated at the rate and compounded in the same manner as the interest imposed by the City's Department of Finance on the delinquent payments of real estate taxes; *provided, however,* that the effective rate of such interest shall not exceed the maximum interest permitted by law.

(e) For purposes of this subsection (ii) and subsection (i) of this Section 8.5, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) business days from the date of the notice.

With respect to subsection (ii)(c) immediately hereinabove, the "statutory judgment rate" shall be the statutory judgment rate in effect on the date of the Agency's demand; and with respect to subsection (ii)(d) immediately hereinabove, the interest rate and compounding "imposed by the City's Department of Finance on delinquent payments of real estate taxes" shall be the rate and the compounding in effect on the date of the Agency's demand.

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

(y) all real estate tax benefits that have accrued to the benefit of the Company during such time as the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments that the Company would have paid during the term of this Agreement had the Agency not had a leasehold or controlling interest in the Facility Realty during such term; and

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

The term “**Recapture Period**” shall mean the period of time commencing on the Commencement Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

The term “**Recapture Event**” shall mean any one of the following events:

(a) The Company shall have failed to complete the Project by the Project completion date set forth in Section 2.2 hereof.

(b) The Company shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

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

(d) The Company shall have substantially changed the scope and nature of its operations at the Facility Realty.

(e) The Company shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(f) The Company shall have subleased all or part of the Facility Realty in violation of Section 9.3 hereof.

(g) The Company shall have relocated all or substantially all of its operations at the Facility Realty to another site; *provided, however, and notwithstanding the foregoing*, such relocation shall not be a Recapture Event (as defined herein) if (i) the Company has relocated its operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City; and (ii) the Company maintains, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Company at the Facility Realty prior to relocation; and (iii) the Company shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Company to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under subsection (i) preceding, and the calculation of interest pursuant to subsection (ii)(c) of this Section 8.5 shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Agency deems satisfactory in its sole discretion.

(iii) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event

(a) shall have arisen as a direct, immediate result of (x) *force majeure* as defined in this Agreement, or (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Company to rebuild,

repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or any Affiliate thereof, or

(b) is deemed, in the sole discretion of the Agency, to be (y) minor in nature, or (z) a cause of undue hardship to the Company were the Agency to recapture any Benefits.

(iv) The Company covenants and agrees to furnish the Agency with written notification of any Recapture Event within ten (10) days of its occurrence and shall subsequently provide to the Agency in writing any additional information that the Agency may request.

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

ARTICLE IX

MISCELLANEOUS

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

The 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*. 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. Reserved.

Section 9.3. Assignment or Sublease. (a) The Company shall not at any time (i) except as

permitted by Section 6.1 hereof, assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility, without the prior written consent of the Agency (which consent of the Agency will be based upon satisfaction of the Agency's subletting policies as in effect from time to time), and provided that

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

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

(iii) any assignee or transferee of the Company or any sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the 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;

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

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

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

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

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

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

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

(b) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency

consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Company.

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

(d) The Company shall file with the Agency by January 1 of each year, commencing January 1, 2007, a certificate of an Authorized Representative with respect to all tenancies in effect at the Facility Realty, in the form attached hereto as Schedule C.

Section 9.4. Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

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

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

(z) if to the Company, to Federal Express Corporation, 3680 Hacks Cross Road, Building H, Memphis TN 38125, Attn: Managing Director, Business Transactions, with a copy to Stadtmauer Bailkin, LLP, 850 Third Avenue, New York, NY 10022, Attn: Steven Polivy.

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

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

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

affect any of the remaining provisions hereof.

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

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

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

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

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

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

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

Section 9.14. Non-Discrimination. At all times during the maintenance and operation of the Facility, 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 Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(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 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

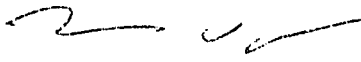
(c) The Agency and the Company shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

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

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

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director or Deputy Executive Director and the Company has duly executed this Agreement all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Maureen Babis
Deputy Executive Director

FEDERAL EXPRESS CORPORATION

By: _____
Graham Smith
Vice President, Properties and Facilities


IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director or Deputy Executive Director and the Company has duly executed this Agreement all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Maureen Babis
Deputy Executive Director

**Approved
Legal Department**
dhm 10/25/06

FEDERAL EXPRESS CORPORATION

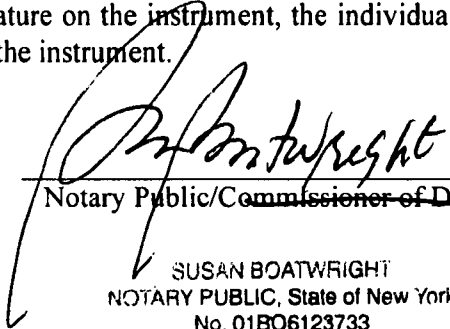
 By: _____
Graham Smith
Vice President, Properties and Facilities

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 10 day of October, in the year 2006 before me, the undersigned, personally appeared Maureen Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

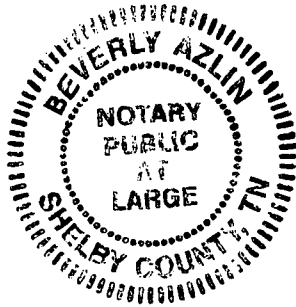

~~Notary Public/Commissioner of Deeds~~
SUSAN BOATWRIGHT
NOTARY PUBLIC, State of New York
No. 01BO6123733
Qualified in Kings County
Commission Expires March 14, 2009

Tennessee
STATE OF ~~NEW YORK~~)

: ss.:

COUNTY OF ~~NEW YORK~~)
Shelby

On the 9th day of October in the year 2006, before me, the undersigned, personally appeared Graham K. 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 or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Beverly Azlin

Notary Public

MY COMMISSION EXPIRES 9-19-2007

DESCRIPTION OF THE LAND

Those certain lots, pieces or parcels of land generally known as:

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
601	13	148 Leroy Street New York, New York

all as more particularly described in the legal description attached hereto.

CHICAGO TITLE INSURANCE COMPANY
SCHEDULE A DESCRIPTION

Title No.: 3106-00432

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Leroy Street and the westerly side of Washington Street;

RUNNING THENCE Westerly along the southerly side of Leroy Street, 70 feet;

THENCE Southerly along a line forming an interior angle of 88 degrees 57 minutes 40 seconds on its easterly side with the southerly side of Leroy Street 101 feet 9 inches;

THENCE Westerly parallel with Leroy Street, 55 feet;

THENCE Northerly along a line forming an exterior angle of 91 degrees 02 minutes 20 seconds on its Easterly side with the last described line 1 foot 7-1/4 inches;

THENCE westerly parallel with Leroy Street 61 feet 1 3/4 inches;

THENCE Southerly at right angles to Clarkson Street to and through the center of a party wall 99 feet 11-1/2 inches to the northerly side of Clarkson Street;

THENCE Easterly along the northerly side of Clarkson Street 180 feet 3-1/4 inches to the corner formed by the intersection of the northerly side of Clarkson Street and westerly side of Washington Street;

THENCE Northerly Along the westerly side of Washington Street 200 feet 4 inches to the corner formed by the intersection of the westerly side of Washington Street and the southerly side of Leroy Street to the point or place of BEGINNING.

DESCRIPTION OF THE FACILITY EQUIPMENT

Package Sorting Equipment, including but not limited to conveyors and package moving equipment

Computer and telecommunications equipment

Vehicle lifts and maintenance equipment

PROJECT COST BUDGET

General construction (vehicle maintenance)	\$1,400,000.00
General construction (facility)	\$1,900,000.00
Sort system	\$465,000.00
Telecom & data	\$300,000.00
Security	\$150,000.00
A&E fees	\$345,000.00
Freight	\$50,000.00
Sales and use tax	\$40,000.00
Contingency	\$350,000.00
Capitalized interest	
Other	
Total	\$5,000,000.00

EMPLOYMENT and BENEFITS REPORT

For the Fiscal Year July 1, 20[] – June 30, 20[] (FY '[])

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than August 1, 20[].

PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

- 1. Number of permanent Full-Time Employees as of June 30, 20[]
2. Number of non-permanent Full-Time Employees as of June 30, 20[]
3. Number of permanent Part-Time Employees as of June 30, 20[]
4. Number of non-permanent Part-Time Employees as of June 30, 20[]
5. Number of Contract Employees as of June 30, 20[]
6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20[].

7. Number of employees included in item 6 above who reside in the City of New York

8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Y N (please circle Y or N)

Do the Company and its Affiliates offer health benefits to all Part-Time Employees? Y N (please circle Y or N)

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

- 9. Number of employees in Item 6 who are "Exempt"
10. Number of employees in Item 6 who are "Non-Exempt"
11. Number of employees in item 10 that earn up to \$25,000 annually
12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually
13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY'[]:

14. Value of sales and use tax exemption benefits \$

15. Value of Commercial Expansion Program ("CEP") benefits \$ _____

16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$ _____

17. Were physical improvements made to any Project Location during FY [] at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Y N (please circle Y or N)

If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s)

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and New York City Industrial Development Agency ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in connection with the administration of the programs of NYCEDC and/or NYCIDA and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCIDA or NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: _____

Signature By: _____ Date: _____

Name (print): _____ Title: _____

DEFINITIONS:

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to a Project Agreement.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

"Financial Assistance" is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) program or New York City Public Utility Service (NYCPUS) program.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

"Project Agreement" is any agreement or instrument pursuant to which an entity received or receives Financial Assistance.

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

"Tenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

ITEM INSTRUCTIONS For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms.

1- 4. Items 1, 2, 3 and 4 must be determined as of **June 30, 20[]** and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**

5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. **Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.**

9. Indicate the number of employees included in item 6 who are classified as "**Exempt**", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

10. Indicate the number of employees included in item 6 who are classified as "**Non-Exempt**", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program.

15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.

16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

BENEFITS REPORTFor benefits utilized during the period of / / - / / **SALES TAX BENEFIT**not applicable, no benefit used this period not applicable, maximum benefit reached not applicable, project not eligible for benefit

Total Purchase Costs:	\$ _____
Total Sales Tax Benefits:	\$ _____
Discount Rate Percentage:	_____ %
Total NPV of Sales Tax Benefits:	\$ _____

BUSINESS INCENTIVE RATE - (BIR)not applicable, no benefit used this period not applicable, maximum benefit reached not applicable, project not eligible for benefit

Cost at Market Rate:	\$ _____
Cost at BIR:	\$ _____
Amount of Benefit: (<i>market rate-BIR</i>)	\$ _____
Discount Rate Percentage:	_____ %
Total NPV of BIR Benefit:	\$ _____

Principal/Owner/Chief Financial Officer: _____
(Please print)

Signature: _____ Date: _____

QUESTIONS: Please call the **IDA Compliance Helpline** at (212) 312-3968.**PLEASE FAX YOUR RESPONSE TO 212-312-3918**

20-- subtenant survey

Federal Express Corporation
3680 Hacks Cross Road, Building H
Memphis, Tennessee 38125

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

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number: _____

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

HelpLine: 212-312-3968

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

For Period Ending December 31, _____ (enter year)

Project Information

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

- Project purpose:
- Services
 - Wholesale trade
 - Transportation, communication, electric, gas or sanitary services
 - Manufacturing
 - Construction
 - Retail trade
 - Other (specify) _____
 - Agriculture, forestry, fishing
 - Finance, insurance or real estate

Date project began: _____ / _____ / _____
MM DD YY

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

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

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

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

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?

Section 9.17. 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.

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 indurement 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.

**PROJECT COMPLETION CERTIFICATE OF COMPANY AS
REQUIRED BY SECTION 2.2 OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of **FEDERAL EXPRESS CORPORATION**, a New York corporation (the "Company"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of October 1, 2006 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Company, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

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

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

the Agency has a good and valid leasehold estate in the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

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

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

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

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

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

FEDERAL EXPRESS CORPORATION

By: _____
Name:
Title:



LOCATION & CONTACT INFORMATION

Due Date By Facsimile: July 31, 20____

Federal Express Corporation
3680 Hacks Cross Road, Building H
Memphis, Tennessee 38125

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits from the New York City Industrial Development Agency ("IDA").

Project Address & Floor	Borough	Zip Code	Type of Benefit (Pilot, Sales Tax, etc.)
_____	_____	_____	_____
_____	_____	_____	_____

*** Please use additional pages if necessary ***

Please provide below current Project Contact Information:

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

(Please print CLEARLY)

Signature: _____

Backup Contact Name/Title/Phone Number:

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:

NYC IDA
Attention: Compliance Dept.
110 William Street, 4th Floor
New York, NY 10038

QUESTIONS: Please contact the IDA Compliance Helpline at (212) 312-3963