Lease Agreement

EXECUTION COPY

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

FEDERAL EXPRESS CORPORATION

LEASE AGREEMENT (FEDEX -HRY)

Dated as of December 1, 2006

New York City Industrial Development Agency
2006 Federal Express Corporation (Harlem River Yard Project)

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

TABLE OF CONTENTS

LEASE AGREEMENT (FEDEX -HRY)

This **LEASE AGREEMENT (FEDEX -HRY)**, made and entered into as of December 1, 2006 (this "Agreement" or "Lease 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 organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York (the "Company"), party of the second part, having its principal office at 3620 Hacks Cross Road, 3rd Floor, Building B, 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, the People of the Sate of New York acting by and through the New York State Department of Transportation (the **"Owner"**) is the owner of a certain premises known as the Harlem River Yards, in Bronx, New York (the **"HRY"**); and

WHEREAS, the Owner, as landlord, and Harlem River Yard Ventures, Inc. (**"HRYV"**), a New York corporation, as tenant, entered into a Lease Agreement, dated August 6, 1991 (the **"Ground Lease"**), for the development and operation of the Leased Premises (as such term is defined therein);

WHEREAS, HRYV, as sublessor, and MDG-NYC, LLC, a Delaware limited liability company (the **"Developer"**), as sublessee, entered into a Sublease Agreement, dated November 21, 2006 (as the same may be amended from time to time in accordance therewith and the Project Documents, the **"HRY Sublease"**), for the construction of certain improvements, as more particularly described therein, including, without limitation, the Facility on the Land (as such terms are hereinafter defined); and

WHEREAS, pursuant to a Lease Agreement, dated November 21, 2006 (as the same may be amended from time to time in accordance therewith and the Project Documents, the **"Prime Lease"**), between the Developer and the Company, the Developer has leased to the Company the Land and certain improvements to be constructed thereon, as more particularly described therein, including, without limitation, the Facility; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company and/or the Developer, on behalf of the Company, to construct, install and equip a certain commercial facility within City consisting of the construction, improvement and equipping of an approximately 98,000 square foot building (the **"Project Building"**) to be constructed on an approximately 447,600 square foot parcel of land located along the Bronx riverfront below East 132nd Street at the HRY, and otherwise described in Exhibit A hereto, 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 (the "**Land**"), for use in part by the Company as a package sorting and distribution facility (collectively, the **"Project"**); and

WHEREAS, the Land, the Project Building (including all Facility Improvement Materials and Base Building Equipment) 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, 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, including the Facility Equipment (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, in furtherance of the purposes of the Act, on July 11, 2006, as amended on September 12, 2006, the Agency adopted a resolution (the **"Authorizing Resolution"**) authorizing the undertaking of the Project and the execution and delivery of certain Project Documents (as defined herein) by the Agency; and

WHEREAS, the provision by the Agency of financial assistance to the Company and the Developer through a straight-lease transaction has been determined to be necessary to induce the Company and the Developer to proceed with the Project and thereby to retain jobs in New York City; and

WHEREAS, Bank of the West (the **"Initial Lender"**) has agreed to provide a loan to Developer, in the aggregate principal amount of $18,954,000, for the purpose of financing a portion of the costs of the construction and equipping of the Facility, and the Developer, simultaneously with the execution and delivery hereof, will enter into a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan) and a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Project Loan), (collectively, the **"Initial Mortgage"**), in the principal amount of such loan, in favor of the Initial Lender; and;

WHEREAS, in order to evidence the Developer's obligation to repay the loan made by the Initial Lender to it pursuant to the Initial Mortgage, the Developer, simultaneously with the execution and delivery thereof, will issue to the Initial Lender one or more a promissory notes (the **"Mortgage Note"**) in the aggregate principal amount of the Initial Mortgage; and

WHEREAS, on the date hereof, the Company has conveyed, or caused to be conveyed, to the Agency pursuant to a Company Lease Agreement (FEDEX -HRY) (as the same may be amended from time to time in accordance therewith and the Project Documents, the **"Company Lease"**), dated the date hereof, a good and valid leasehold interest in the Facility;

WHEREAS, pursuant to this Agreement, the Agency will lease to the Company the Agency's leasehold interest in the Facility under the Company Lease;

WHEREAS, pursuant to a PILOT Agreement, dated as of December 1, 2006 (as the same may be amended from time to time in accordance therewith and the Project Documents, the **"PILOT**

Agreement"), by and among the Company, the Developer and the Agency, the Company and the Developer have agreed to make certain payments in lieu of real estate taxes with respect to the Project Building; 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 used by the Company as a package sorting and distribution facility.

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 July 11, 2006, as amended on September 12, 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 Building Equipment shall mean base building machinery and equipment, including, elevator, electrical, plumbing and HVAC fixtures, apparatus, systems and other similar fixtures, apparatus, systems, machinery and equipment to be installed in the Project Building and made a part thereof.

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

Benefits shall mean, collectively, collectively, (i) all Sales Tax Savings, and (ii) all Real Property Tax Savings, and (iii) all Mortgage Recording Tax Savings (each of (i), (ii) and (iii) individually, a "Benefit"), availed of and to be availed of by the Company and/or the Developer for the benefit of the Company pursuant to any of the Developer Project Documents or the Company Project Documents.

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..

Commencement Date shall mean December 28, 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, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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 Project Documents shall, collectively, mean the Company Lease, this Agreement, the Prime Lease, the PILOT Agreement, the Sales Tax Letter (Company) and the Guaranty Agreement.

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

Construction Completion Date shall mean the earlier of (i) May 1, 2008, or (ii) the date upon which the Company and/or the Developer delivers to the Agency the Construction Completion Certificate as the date on which substantial completion of the construction of the Project Building has occurred.

Developer Lease shall mean the Lease Agreement (DEVELOPER - HRY) of even date herewith by and between the Developer and the Agency, and shall include any and all supplements thereto and amendments or restatements thereof hereafter made in conformity therewith.

Developer Sublease shall mean the Sublease Agreement (DEVELOPER - HRY), of even date herewith, from the Agency to the Developer, and shall include any and all supplements thereto and amendments or restatements thereof hereafter made in conformity therewith.

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

Developer Project Documents shall, collectively, mean the Developer Lease, the Developer Sublease, the Sales Tax Letter (Developer), the PILOT Agreement and the Prime Lease.

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 certain tenant improvements at the Facility.

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

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

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

Facility Improvement Project shall mean the construction of the Project Building, and the acquisition and installation of Facility Improvement Materials and Base Building Equipment at the Project Building.

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.

Force Majeure shall have the meaning set forth in Section 9.1 hereof.

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 have the meaning set forth in the recitals hereof.

Legal Requirements shall mean the Constitutions of the United States and of the State of New York, all federal and state laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, 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 Project, (iii) the Facility or any part thereof, or (iv) 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.

Mortgage or **Mortgages** shall, collectively, mean (i) the Initial Mortgage referred to in the recitals to this Agreement and shall include any and all amendments thereof, extensions thereof, and supplements thereto hereafter made in conformity therewith and (ii) any other mortgages permitted pursuant to the Project Documents.

Mortgagee shall mean the Initial Lender or any other commercial bank, institutional lender or other lender acceptable to the Developer and reasonably acceptable to the Agency.

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

Mortgage Recording Tax Savings shall mean the amount of Mortgage Recording Tax that the Developer would have been required to pay in connection with the Mortgage but was not paid as a result of the Agency's leasehold interest in the Facility.

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

Occupancy Date shall mean the earlier of (i) date on which the Company occupies all or a portion of the Facility , and (ii) December 31, 2008.

Opinion of Counsel shall mean (i) with respect to the Developer, a written opinion of Harris Beach PLLC, or such other counsel for the Developer reasonably acceptable to the Agency, and (ii) with respect to the Company, 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 Ground Lease, the HRY Sublease, the Developer Lease, the Developer Sublease, the Company Lease, this Agreement, the PILOT Agreement and the Initial Mortgage;

(ii) any additional Mortgage(s) encumbering the Facility as permitted by Section 4.2 of the Developer Sublease;

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

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

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

(vi) 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;

(vii) those exceptions enumerated in the leasehold title insurance policies delivered pursuant to Section 2.3 hereof insuring the Agency's leasehold interests in the Facility;

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

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

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

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

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 have the meaning set forth in the recitals hereof.

Project Building shall have the meaning set forth in the recitals hereof.

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, collectively, the Developer Project Documents and the Company Project Documents.

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

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 (Company) 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 Schedule G-1 to this Agreement.

Sales Tax Letter (Developer) shall mean the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Developer in accordance with and substantially in the form set forth in Schedule B to the Developer Lease Agreement (HRY).

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

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

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

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

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**.

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

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

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

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

(iv) The Company has undertaken the Project as a result of its expected dislocation of its operations from its existing facilities located at 34th Street and 12th Avenue in Manhattan as a result of condemnation proceedings either commenced or to be commenced by the City of New York pursuant to the New York Eminent Domain Procedure Law for the City's contemplated construction of a subway terminal for the number 7 subway line; and

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

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

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

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

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

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

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

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

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

(b) The Prime Lease obligates the Developer to design the Facility in substantial compliance with all Legal Requirements.

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

(d) The Company will use and operate the Facility in compliance with all Legal Requirements.

(e) 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).

(f) 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.

(g) 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.

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

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

(j) 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.

(k) The aggregate rentable square footage of the Facility will be approximately 98,000 square feet and the aggregate square footage of the Land is approximately 447,600 square feet.

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

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

(c) 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 and the Project Documents

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

(e) The Company will cause the Developer, pursuant to the terms of the Prime Lease, to obtain or cause to be obtained all necessary approvals, permits, authorizations and licenses from appropriate authorities (except such approvals, permits, authorizations and licenses as only the Owner or HRYV shall have legal standing to obtain and those permits, approvals and authorizations that the Developer is obligated to obtain pursuant to the terms of the HRY Sublease), authorizing the operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency promptly upon receipt thereof, all of which will be done in compliance in all material respects with the Legal Requirements, and with the conditions and requirements of all policies of insurance required to be maintained hereunder and under the Prime Lease with respect to the Facility.

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

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

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

(i) The Company covenants that Prime Lease requires that Developer design the Project in substantial compliance with Legal Requirements.

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

Section 2.3. Leasehold Title Insurance. On or prior to the Commencement Date, the Company will cause the Developer to obtain and deliver to the Agency the leasehold title insurance policy and survey described in Section 2.5 of the Developer Sublease.

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 Equipment 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 Equipment Project. The Company shall be entitled to sales and use tax exemptions pursuant to the Sales Tax Letter (Company) and/or this Agreement until the earliest of (i) December 31, 2008, (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 (Company) pursuant to the terms thereof or pursuant to the terms thereof or pursuant to Section 7.2(c) hereof.

(b) After the Lease Commencement Date, the Company shall proceed on behalf of and as agent for the Agency with the acquisition of the Facility Equipment for use at the Facility, all to constitute part of the Equipment Project. The Agency and the Company acknowledge and agree that the Facility Equipment is to be acquired for use solely at the Facility. At the request of the Agency, the Company shall provide such additional information and clarifications concerning any item of Facility Equipment as

shall be reasonably requested by the Agency.

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

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

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

(iii) such contract, invoice, bill or purchase order shall recite that it is assignable at the option of the Agency (without the consent of the vendor or the Company or either of them), to whom the Agency may transfer its interest in such contract, invoice, bill or purchase order under this Agreement (which option the Agency shall exercise only upon the termination of this Agreement), and

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

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Federal Express Corporation, a corporation organized under the laws of the State of Delaware (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition from time to time of machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property for use at a certain leasehold premises consisting of approximately 98,000 square feet of space in that building known as 670 East 132nd Street, Bronx, New York, by the Agent, as such capitalized terms are defined in the attached Letter of Authorization for Sales Tax Exemption. The machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase

order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.

(e) If the Company shall fail to include, incorporate by reference or otherwise cause the above language to be included in substantially the above form in any such contract, agreement, invoice, bill or purchase order, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the Sales Tax Savings (Company) able to be conferred by the Agency, and the Company shall not claim any Sales Tax Savings (Company) with respect to any such contract, agreement, invoice, bill or purchase order and the Company shall promptly deliver notice of same to the Agency and, if such failure shall be capable of being cured, cure such failure within thirty (30) days of delivery of such notice. If such failure shall not be capable of being cured, or if so capable and the Company shall fail to cure such failure within such thirty (30) day period, the Company shall, upon demand by the Agency, pay to the agency a return of sales and use tax exemptions as provided in paragraph (f)(iii) below.

(f) On the Commencement Date, the Agency shall make available to the Company the Sales Tax Letter (Company). 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 (Company)) 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 (Company) shall be limited as set forth below:

(i) Subject to Section 2.4(e), the authorizations set forth in the Sales Tax Letter (Company) 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.

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

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

(B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by the Company at the Facility (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,

(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 (Company) 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,

(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 (Company).

(iii) In the event that the Company shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter (Company) 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.

(iv) 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 (Company) and the dates and amounts so utilized.

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

(h) 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 (Company), 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 (Company) 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.

(i) 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.

(j) In addition to the provisions set forth in this Section 2.4, all of the terms, conditions and covenants of the Company in the Sales Tax Letter (Company) are deemed incorporated by reference in this Agreement, with the same force and effect as if each and every provision thereof were more fully and at length set forth herein.

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, subject, however, without modifying the obligations of the Company hereunder, to the terms, conditions and limitations set forth in the Prime Lease.

(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 the earliest of (i) July 1, 2032, (ii) the expiration or earlier termination of the Prime Lease (as extended by options exercised by the Company) or the Company Lease, (iii) the assignment by the Company of its interests in the Prime Lease (other than pursuant to Section 6.1 or 9.3 hereof) to a Person other than an Affiliate, or (iv) 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 the PILOT Agreement) 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 or cause the Developer to keep in accordance with the Prime Lease 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 or cause the Developer to make in accordance with the Prime Lease, all replacements and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure the continuity of the operations of the Company for the purposes contemplated by this Agreement. All replacements and repairs effected by the Company shall be performed in a good and workmanlike manner and be made and installed in compliance with the requirements, if any, of all governmental bodies and the Company shall use reasonable efforts to cause all replacements and repairs effected by Developer to be so performed. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the 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 that, as between the Company and the Agency, the Company assume full responsibility therefor.

(b) The Company shall have the right to make such alterations or to furnish any utilities or services for the Facility to make such replacements, or repairs 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) the continuity of the operation of the Facility as an Approved Facility is not materially impaired for longer than reasonably necessary, (ii) such additions, alterations, replacements or repairs are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable

Legal Requirements, (iii) such additions, alterations, replacements or repairs are promptly and fully paid for by the Company (or the Developer) in accordance with the Prime Lease and the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrances, security interest or claim other than Permitted Encumbrances, (iv) title thereto or a leasehold interest therein shall be deemed to be vested in the Agency, and (v) such additions, alterations, replacements or repairs do not change the nature of the Facility so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act for use for the general purposes specified in the recitals to this Agreement. All alterations of, substitutions for, replacements of and additions to the Facility shall be deemed to constitute a part of the Facility, subject to this Agreement, and title to, or leasehold interest in, such property shall automatically vest in the Agency free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances immediately upon installation or incorporation in the Facility or payment therefor, whichever shall first occur. The Company or its insurer shall have the right to direct the defense of the Agency pursuant to this Section 6.2 and the Agency shall not compromise any claim without the prior consent of the Company, or if defended by the insurer, the prior consent of the insurer, provided that no settlement or compromise is otherwise prejudicial to the Agency.

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

(d) The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Company in the Facility or this Agreement, except for Permitted Encumbrances and except as provided in Section 6.5 hereof.

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

Section 4.2. Removal of 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 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, (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. **PILOT Agreement.** All of the terms, conditions and covenants of the Company under the PILOT Agreement are deemed incorporated by reference in this Agreement, with the same force and effect as if each and every provision thereof were more fully and at length set forth herein.

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 the PILOT Agreement) 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 in the PILOT Agreement) 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 Company 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 Developer) aggregate coverage for bodily and personal injury and property damage, except during the period commencing on the Commencement Date and ending on the Occupancy Date, when such obligation shall be the obligation of the Developer;

(ii) Except during the period commencing on the Commencement Date and ending on the Occupancy Date, when such obligation shall be the obligation of the Developer, 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 Commercial 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 (which the Company shall cause the Developer to obtain for the Developer's employees and which the Company shall obtain in the event that the Company has employees), disability benefits insurance and such other forms of insurance which the Company, the Developer 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 Developer, the Initial Mortgagee, 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 Developer, 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 Developer, the Initial Mortgagee, the Company and/or the Agency

arising from such contractor's or subcontractor's negligent activity, except during the period commencing on the Commencement Date and ending on the Occupancy Date, whensuch obligation shall be the obligation of the Developer; 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, the Developer 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 by the Developer and operated by the Company or its Affiliates.

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

(e) 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 and endorsements, 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 or the Developer 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 OR THE DEVELOPER.

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**.

(a) The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, and subject to the provisions of Section 4.7(b) below, use and operate the Facility (or promptly use good faith diligent efforts to cause all of their subtenants, users and operators to use and operate the Facility in all material respects in compliance with all Legal Requirements. Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Developer with any Legal Requirement: (i) if the Company has no right under the Prime Lease to compel the Developer to

comply or cause compliance with such Legal Requirement; (ii) if the Developer is required, or the Company reasonably believes the Developer is required, under the terms of the Prime Lease to comply with such Legal Requirement, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (iii) if such non-compliance is the result of any action or failure to act on the part of the Developer (which action or failure to act is not a breach of any obligation of the Developer to the Company under the Prime Lease) or of any tenant (other than the Company, or any Affiliate thereof or a tenant, directly or indirectly, of the Company, or any Affiliate thereof) in any portion of the Facility or of any agent, contractor, officer, director, employee or servant of the Developer or of any such tenant.

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

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

(d) The provisions of this Section 4.7 are for the sole benefit of the Agency and the Company, and no other Person whatsoever shall be or be deemed to be a third party beneficiary thereof or hereof.

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

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. **Damage, Destruction and Condemnation of the Project Building.** In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or

by agreement among the Agency, the Company and the Developer, 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 rents or other amounts payable by the Company under this Agreement or any other Project Document to which it is a party,

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

(iv) the Company shall deliver prompt written notice to the Agency as to whether the Company and/or the Developer intends to rebuild, replace, repair or restore, or cause such rebuilding, replacement, repair or restoration of, such Project Building and whether the Company intends to continue its occupancy or abandon such Project Building. During the period between the occurrence of the Loss Event and the date upon which the Company shall deliver the above-stated written notice to the Agency, and in order to minimize any risks of harm to person or property, the Company shall cause the damaged or destroyed portion of the Facility to remain vacant and unoccupied, unless pursuant to the relevant Legal Requirements and the terms of the Prime Lease, the Company may partially occupy such portion.

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

(i) at the sole cost and expense of the Developer and/or the Company 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 with adjustments that may be necessary due to the nature of 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 neither the Company nor the Developer shall 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, the PILOT 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 Project Building by the Company (or the Developer, as the case may be) in respect of or occasioned by a Loss Event shall

(i) automatically be deemed a part of the Project Building leased to, the Agency and be subject to the Prime Lease, the Company Lease, this Agreement, the Developer Lease, the Developer Sublease and the PILOT Agreement,

(ii) be effected under the leasehold interest in the Facility and the provisions of this Agreement and such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as a qualified "project" as defined in the Act,

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

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

(e) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Project Building 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1. **Dissolution or Merger of the Company; Restrictions on the Company.** The Company hereby covenants and agrees that, at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State of New York and either be organized under the laws of the State of New York or the laws of any other state of the United States and duly qualified to do business in the State of New York, (iii) not liquidate, wind-up, dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (iv) not consolidate with or merge into another corporation or another legal entity or permit one or more other legal entities to consolidate with or merge into it. Notwithstanding the provisions of the immediately preceding sentence,

the Company may, however, without violating the foregoing, upon prompt written notice to the Agency consolidate with or merge into another corporation or other legal entity, or permit one or more other legal entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation or other legal entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect) if (i) the Company is the surviving, resulting or transferee legal entity, or (ii) in the event that the Company is not the surviving, resulting or transferee legal entity, such other legal entity (A) is solvent and subject to service of process in the State and duly qualified to do business in the State, (B) is not, nor is it an Affiliate of, a Prohibited Person, (C) is engaged in the Company Business, (D) assumes in writing all of the obligations of the Company contained in this Agreement and in each other Project Document to which the Company shall be a party, and, in the Opinion of Counsel delivered to the Agency, such corporation or other legal entity shall be bound by all of the terms of this Agreement and of each other Project Document to which the Company shall be a party, and (E) in the opinion of an Independent Accountant (which may take the form of a published financial statement) delivered to the Agency, has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to the lesser of (x) the net worth of the Company immediately prior to such merger, consolidation, sale or transfer or (y) $200,000,000.

Section 6.2. **Indemnity.** (a) The Company shall at all times defend, protect, and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, costs, expenses (including, without limitation, attorneys' fees and court costs) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), arising during the term of this Agreement upon, about or in connection with the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility Improvement Project, (ii) the planning, design, acquisition, leasing, licensing, equipping, installation, maintenance, repair or replacement of the Facility or any part thereof or the effecting of any work done with respect to the Facility, (iii) failure by the Company or the Developer (or any other Person operating or using the Facility or any part thereof) to comply with any Legal Requirement; (iv) compliance with any Legal Requirement imposed upon the Company, or the Indemnified Parties (v) any defects (whether latent or patent) in the Facility or any part of either thereof, (vi) the maintenance, repair, replacement, restoration, renovation, improvement, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting, licensing, sublicensing or operation of the Facility or any portion thereof, (vii) this Agreement, the Developer Lease, the Developer Sublease, the PILOT Agreement, the Sales Tax Letters, or any other Project Document, or other document or instrument required to be delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. No Indemnified Party shall be liable for any damage or injury to the person or property of the Company or any Affiliate or their respective directors, officers, employees, agents or servants or persons under the control or supervision of the Company or such Affiliate or any other Person who may be about the Facility or involved with the Facility or the Facility Improvement Project due to any act or negligence of any Person other than, with respect to any such Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, and agrees to indemnify and hold each Indemnified Party harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivisions (i) through

(vii) of Section 6.2(a) hereof or at the direction of the Company or any Affiliate thereof. The foregoing indemnification shall not apply to an Indemnified Party with respect to any losses arising from gross negligence or willful misconduct of such Indemnified Party. Any Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action. However, the failure to give such notice in sufficient time shall not constitute a defense hereunder or in any way impair the obligations of the Company under this Section 6.2, if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Company's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (i) the Indemnified Party shall not have timely notified the Company of any such claim or action, (ii) the Company shall not have had knowledge or notice of such claim or action, and (iii) the Company's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Company's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used and will not use Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Company's knowledge and based on information included in the Phase II Environmental Site Assessment Report prepared by Roux Associates (the **"Environmental Auditor"**), dated September 13, 2005, true and complete copies of which the Company has delivered to the Agency (collectively, the **"Audit"**), the Facility does not contain any Hazardous Materials which are or have been used in any manner which violates Federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the 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, any Affiliate, or any tenant or subtenant of the Company, a release of Hazardous Materials onto the Facility or any portion thereof or onto any other property from the Facility in violation of any environmental law or regulation thereof. The Company shall comply with, and exercise good faith diligent efforts to ensure compliance by Affiliates and all tenants or subtenants of the Company at the Facility with all applicable Federal, state and local laws, ordinances, rules and regulations as may relate to the Facility, whenever and by whomever triggered, and shall obtain and comply with, and exercise good faith diligent efforts to ensure that all tenants or subtenants of the Company at the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company (i) shall cause the Developer, pursuant to the Prime Lease, to the extent required by law take such action as is necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (y) in accordance with all applicable Federal, state and local laws, ordinances, rules and regulations, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities (except to the extent contested in good faith and provided the Company shall have provided adequate reserves therefor and except to the extent that Developer has the obligation to take such actions under the terms of the Prime Lease), and (ii) defend, indemnify, and hold harmless the Agency from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or otherwise at the 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 made in accordance with environmental laws and regulations, or any requirements of the Agency made in accordance with environmental laws and regulations, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "**Hazardous Materials**" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities that the Company may have to the Agency at common law, and the indemnifications, releases and hold harmless provisions set forth herein shall survive the termination of this Agreement.

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

(e) To effectuate the purposes of this Section 6.2, the Company will provide for and insure, in the commercial general liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability to the Indemnified Parties pursuant to this Section 6.2 provided that the obligation of the Company to provide insurance with respect to its liability under Section 6.2(c) hereof shall be effective only to the extent that such insurance is available on a commercially reasonable basis. Anything to the contrary in this Agreement notwithstanding, the indemnification covenants of the Company contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by any Indemnified Party relating to the enforcement of the provisions herein specified.

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

(g) On or before the Commencement Date, the Company shall provide to the Agency a letter (the **"Phase II 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.

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

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 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 $233,846, 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, the Developer 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 Prime Lease and other 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 annual reviewed 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, 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 it 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 and shall cause

the Developer to submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the 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.

Section 6.12. Further Encumbrances. 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 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.

Section 6.16. Environmental Remediation. The Company shall cause the Developer to: (a) cover the Land with an impervious surface with the exception of up to a 40,000 square foot potential expansion area as indicated on the attached site plan ("Expansion Area"), which Expansion Area and solely the Expansion Area may be covered either by an impervious surface or a minimum of two (2) feet of clean fill, subject to the following conditions: (i) if all clean fill is derived from one source site, such clean fill shall (x) not contain any construction or demolition material (*e.g.*, glass, brick, wood, concrete, etc.), (y) undergo testing for every 500 cubic yards, including tests for metals, pesticides, PCBs, volatile organic chemicals and semi-volatile chemicals on the New York State target compound and target analytic list, such that all clean fill to be used in the Expansion Area shall comply with all applicable New York State Department of Conservation ("NYSDEC") Technical and Administrative Guidance Memorandum ("TAGM") 4046 criteria, copies of which test results the Company and/or the Developer must submit to the Agency for verification that the TAGM 4046 criteria are being met; or (ii) if clean fill is derived from more than one source site, such clean fill shall (x) not contain any construction or demolition material (*e.g.*, glass, brick, wood, concrete, etc.), (y) undergo testing for every 500 cubic yards taken from every source site, or for any lesser volume if less than 500 cubic yards is brought in from one or more sites, including tests for metals, pesticides, PCBs, volatile organic chemicals and semi-volatile chemicals on the New York State target compound and target analytic list, with the result that all clean fill to be used in the Expansion Area shall comply with all applicable NYSDEC TAGM 4046 criteria, and the Company and/or the Developer must submit copies of all test results on the clean fill to the Agency for verification that the TAGM 4046 criteria are being met.

Section 6.17. Right to Cure Agency Defaults. The Agency hereby grants to the Company full authority for the account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default, in the name and stead of the Agency, with full power of substitution.

Section 6.18. Enforcement of Rights Under Prime Lease Against Developer. The Company covenants and agrees that to the extent that the Developer is obligated to the Company under the Prime Lease to comply with all Legal Requirements (the foregoing covenant of the Developer being the "Developer Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Developer Covenants, and upon the direction of the Agency, the Company shall promptly exercise reasonable good faith diligent efforts to enforce the Developer Covenants against the Developer.

Section 6.19. Covenants with Respect to the Prime Lease. (a) The Company covenants and agrees that it shall not enter into consent, permit or approve an amendment, supplement or modification to the Prime Lease which would adversely affect the interests of the Agency (or otherwise amend, supplement, modify or waive any of the Developer Covenants, as defined in Section 6.18 hereof). Promptly following the execution thereof, the Company shall furnish copies of any amendment, supplement or modification to the Prime Lease to the Agency.

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

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

Section 6.21. Certificate Regarding Occupancy. At least ten (10) days prior to the Occupancy Date, the Company shall deliver to the Agency a certificate of an Authorized Representative of the Company, in the form set forth in Schedule I hereto, certifying such Occupancy Date, together with evidence of the insurance required by Section 4.5 hereof.

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 pursuant to Section 3.3 hereof within fifteen (15) days of the due date thereof;

(b) Failure of any of the Company to pay any amount (except the obligation of the Company to pay rent under Section 3.3 of this Agreement) that has become due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Section 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.16, 6.18, 6.19, 6.21, 9.2, 9.3 or 9.14 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such

default from the Agency (provided however that no Event of Default shall exist hereunder with respect to a failure of the Company to comply with Section 6.16 hereof for so long as the Company shall promptly exercise good faith diligent efforts to enforce the Developer Covenants against the Developer regardless of the Developer's compliance therewith);

(c) Failure of the Company to observe and perform any covenant, condition or agreement 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 ninety (90) 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) An Event of Default under any of the Company Project Documents shall occur and be continuing;

(h) The Prime Lease or the Company Lease shall be terminated or expire for any reason whatsoever (other than a termination as a result of the Company acquiring the Developer's interest in the Prime Lease pursuant to the terms thereof, *provided that* the Company shall assume all of the Developer's obligations under the Developer Project Documents);

(i) Any loss of the Agency's leasehold interest in the Facility;

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

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

(d) The Agency may require the Company to make payments in lieu of real estate taxes pursuant to the PILOT Agreement with respect to the Facility in an amount equal to that amount which the Company or the Developer would otherwise be required to pay if the Agency had no leasehold interest in or control over the Facility; 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 and/or the Developer shall again pay full real estate taxes on the Project Building) 6.2, 6.3, 8.4, 7.6, 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. The provisions of this Section 7.6 shall survive the termination of this Agreement.

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 and the Company Lease 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, 6.3, 7.6, 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, 6.3, 7.6, 8.4, 8.5, 9.13 and 9.15 hereof.

Section 8.5. Recapture of Agency Benefits. It is understood and agreed by the Company 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 percent 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 the PILOT Agreement, and (z) Benefit principal comprising Sales Tax Savings shall be deemed to have accrued to the Company on each date upon which such Sales Tax Savings 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) above, 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 the PILOT Agreement 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 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 or the Developer 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.

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

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

(g) The Company shall have relocated all or substantially all of its operations at the Facility 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 and at least 90% of its employees employed at the Facility 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 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, the Developer, or any Affiliate, 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. **Priority**. (a) Pursuant to the Mortgage the Agency and the Developer will grant to the Mortgagee a mortgage lien on and a security interest in the Facility Realty as security for the payment of amounts due under the Mortgage Note. This Agreement shall be subject and subordinate to the Mortgage and to such mortgage lien and security interest so created thereby; provided, however, that

nothing in said Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Company.

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

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 covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Prime Lease.

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

(a) if to the Agency, to the 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;

(b) If to the Company, Federal Express Corporation, 3620 Hacks Cross Road, 3rd Floor, Building B, Memphis, Tennessee 38125, Attention: Managing Director, Business Transactions. A copy of each default notice to the Company shall also be sent to the Company's counsel, Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022, Attention: Steven P. Polivy, Esq., and to the Developer, MDG-NYC LLC, 380 Stevens Avenue, Suite 313, Solana Beach, California 92073, Attention: Ronald D. McMahon, with a copy to Harris Beach PLLC, 805 Third Avenue, New York, New York 10022, Attention: Kevin Hyland, Esq.

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

Section 9.6. **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**. Except as otherwise expressly provided herein, 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. This Section 9.13 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 nor permit the Developer to 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.

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any member, director, officer, employee or agent of the Company in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Company or any natural person executing this Agreement on behalf of the Company.

This Section 9.15 shall survive the termination or expiration of this Agreement.

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

FEDERAL EXPRESS CORPORATION

By:_____
Graham Smith
Vice President, Properties and Facilities

Approved
Legal Department
dhm 12/13/06

APPROVED
ACCOUNTING DEPARTMENT
12/13/06

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 13th day of December, 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

DAVID SHELLEY
Notary Public - State of New York
No. 01SH6122387
Qualified in King County
My Commission Expires February 7, 2009

STATE OF TENNESSEE)

: ss.:

COUNTY OF SHELBY)

On the 13th day of December in the year 2006, before me, the undersigned, personally appeared Graham Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Dana Migliaccio
Notary Public

My Commission
Expires
October 19, 2008

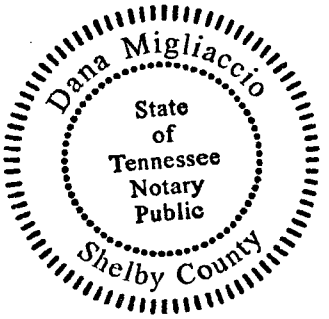


EXHIBIT A

DESCRIPTION OF THE LAND

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

		STREET ADDRESS
Part of Block 2543, Lot 1	Tentative New Tax Lot – Block 2543, Lot 20	670 East 132nd Street Bronx, New York 10454
Part of Block 2583, Lot 2	Tentative New Tax Lot – Block 2583, Lot 10	

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

SCHEDULE A - ITEM 4

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

COMMENCING at a point on the southerly side of East 132nd Street, distant 33 feet West of the easterly side of Cypress Avenue, as prolonged southwardly; Also being the intersection of the Southerly side of East 132nd Street and the Easterly line of lands now or formerly of The New York and Triborough Bridge and Tunnel Authority Bridge Right of Way as described in Liber 923 Page 308;

THENCE South 00 degrees, 01 minutes, 39 seconds West, along said land, a distance of 303.81 feet to the point of beginning.

RUNNING THENCE South 83 degrees 01 minutes 09 seconds East, 571.95 feet to a point;

THENCE northerly along a curve to the left having a radius of 499.50 feet a distance of 507.94 feet to the northeasterly corner of the premises being described herein;

THENCE Southerly along a curve to the left having a radius of 2,523.17 feet a distance of 251.24 feet to lands now or formerly of the New York Power Authority, as prolonged to a point;

THENCE along said lands now or formerly of the New York Power Authority and as prolonged the following three (3) courses and distances:

1) North 88 degrees 56 minutes 55 seconds West 344.83 feet to a point;

2) South 01 degrees 03 minutes 05 seconds West 279.00 feet to a point; and

3) South 88 degrees 56 minutes 55 seconds East 216.25 feet to a point;

THENCE Southerly along a curve to the right having a radius of 684.08 feet a distance of 404.68 feet;

THENCE Westerly along a curve to the right having a radius of 667.50 feet a distance of 211.12 feet to a point;

THENCE North 89 degrees 58 minutes 21 seconds West 380.56 to the Westerly line of lands now or formerly of the New York and Triborough Bridge and Tunnel Authority Bridge Right Of Way as described in Liber 923, Page 308;

THENCE North 00 degrees 01 minutes 39 seconds East along said line a distance of 300.54 feet to a point;

THENCE South 89 degrees 58 minutes 21 seconds East a distance of 114.00 feet to a point on the Easterly line of lands now or formerly of The New York and Triborough Bridge and Tunnel Authority Bridge Right of Way as described in Liber 923 Page 308;

THENCE North 00 degrees 01 minutes 39 seconds East along said line a distance of 360.72 feet to the point of BEGINNING.

EXHIBIT B

DESCRIPTION OF THE FACILITY EQUIPMENT

1. Conveyor Equipment (Conveyor belts, Scissor lifts, Extendos, Caster Decks, Scale Decks, Load/un-load aids, etc.)
2. Office Furniture.
3. Telecomunication Equipment (Voice and Data)
4. Security Equipment.
5. Vehicle Maintenance Equipment.
6. Signage.
7. World Service Center Equipment (Counters, Conveyor, Shelving and scales).

EXHIBIT C

PROJECT COST BUDGET

(list by line items each proposed cost item of the Project, and indicate the source for financing, i.e., loan proceeds or Company equity, for each such item)

PROJECT COST BUDGET

FedEx Improvements		
New Construction	$	2,238,500
Renovations	$	-
Fixed Tenant Improvements	$	-
Machinery &/or Equipment	$	4,865,000
Soft Costs	$	325,000
Furnishings	$	600,000
Total	$	8,028,500

SCHEDULE A

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.

SCHEDULE B

BENEFITS REPORT

For 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:	$_____
(market rate-BIR)	
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

SCHEDULE C

20-- subtenant survey

Federal Express Corporation
3620 Hacks Cross Road
3rd Floor, Building B
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

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

SCHEDULE D

ST-340

(10/99)

New York State Department of Taxation and Finance

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

For Period Ending December 31, _____(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

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

2. Date project began: _____/_____/_____ (MM / DD / YY)

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

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

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

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

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

Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator.

Mail completed report to: **NYS TAX DEPARTMENT, IDA UNIT, BLDG 8 RM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227.**

General Information

Who must file?

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

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

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

What must be reported?

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

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

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

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

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

See instructions below for additional information required.

When is the report due?

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

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.
Tax information: 1 800 972–1233
Forms and publications: 1 800 462-8100
From outside the U.S. and outside Canada: (518) 485–6800
Fax-on-demand forms: 1 800 748–3676
Internet access: http://www.tax.state.ny.us
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634–2100 (8:30 a.m. to 4:25 p.m., eastern time)

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

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence.

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

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

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

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

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

Line instructions
Line 1 – Project purpose – Check the box that identifies the purpose of the project. If you check *Other,* please be specific in identifying its purpose.
Line 2 – Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.
Line 3 – Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or installation on the project. If the project does not involve any construction, enter ***Does not apply.***
Line 4 – Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.
Line 5 – Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.
Line 6 – Enter the total number of years and months from the project's inception to its completion or expected completion.
Line 7 – Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

Signature area
Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.
Mail completed report to: NYS Tax Department, IDA Unit, Bldg. 8 Rm 658, W. A. Harriman Campus, Albany, NY 12227.

Privacy notification

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

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

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

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

SCHEDULE E

CONSTRUCTION COMPLETION CERTIFICATE AS REQUIRED BY SECTION 2.2 OF THE LEASE AGREEMENT

The undersigned, an Authorized Representative (as defined in the Developer Sublease referred to below) of MDG-NYC, LLC, a limited liability company organized and existing under the laws of the State of Delaware, party of the second part (the "Developer"), HEREBY CERTIFY that this Certificate is being delivered in accordance with the provisions of Section 2.2(c) of the Sublease Agreement (DEVELOPER - HRY) dated as of December 1, 2006 (the "Developer Sublease"), between the Developer and the New York City Industrial Development Agency (the "Agency"), and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Developer Sublease):

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

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

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

the Agency has a good and valid leasehold interest in the Facility, and all property constituting the Facility;

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

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

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

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

MDG-NYC, LLC

By: McMahon Development Group, LLC

By:_____
Ronald D. McMahon
Authorized Member

SCHEDULE F

ida New York City Industrial Development Agency

LOCATION & CONTACT INFORMATION
Due Date By Facsimile: July 31, 20_____

Federal Express Corporation
3620 Hacks Cross Road
3rd Floor, Building B
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**

SCHEDULE G-1

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

EXPIRATION DATE: DECEMBER 31, 2008

ELIGIBLE LOCATION(S) FOR CAPITAL IMPROVEMENTS:

670 East 132nd Street, Bronx, New York 10454
Part of Block 2543, Lot 1 (Tentative New Tax Lot - Block 2543, Lot 20)
Part of Block 2583, Lot 2 (Tentative New Tax Lot - Block 2583, Lot 10)

ELIGIBLE LOCATIONS FOR MACHINERY, EQUIPMENT, FIXTURES, FURNISHINGS AND SOFTWARE:

670 East 132nd Street, Bronx, New York 10454
Part of Block 2543, Lot 1 (Tentative New Tax Lot - Block 2543, Lot 20)
Part of Block 2583, Lot 2 (Tentative New Tax Lot - Block 2583, Lot 10)

December 28, 2006

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2006 Federal Express Corporation (Harlem River Yard Project)

Ladies and Gentlemen:

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

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

2. Pursuant to a resolution adopted by the Agency on July 11, 2006 as amended on September 12, 2006, and a certain Lease Agreement (FEDEX-HRY), dated as of December 1, 2006 (the "Lease Agreement"), between the Agency and Federal Express Corporation, a Delaware Corporation (the "Company"), the Agency has authorized the Company to act as its agent for the construction, renovation and equipping and maintenance of a commercial facility consisting of the construction, improvement and equipping of an approximately 98,000 square foot building to be constructed on an approximately 447,600 square foot parcel of land located along the Bronx riverfront below East 132nd

Street at the Harlem River Yards (the "Facility") for use in part by the Company as a package sorting and distribution facility (the "Project").

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, renovation and equipping of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, equipment, machinery, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Exhibit A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the acquisition, renovation and equipping of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Exhibit B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Exhibit B.

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

> "This [contract, agreement, invoice, bill or purchase order] is being entered into by [Identify the Company or Agent] _____, a _____ (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for Federal Express Corporation, a Delaware Corporation (the "Company")] being the acquisition, renovation and equipping of a [industrial] [commercial] facility (the "Facility"), consisting of the construction, improvement and equipping of an approximately 98,000 square foot building to be constructed on an approximately 435,600 square foot parcel of land located along the Bronx riverfront below East 132nd Street at the Harlem River Yards (the "Project"). The [purchase, lease, rental, use] of the [materials, machinery, equipment, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [*insert name and address of vendor* (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and 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 [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

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

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

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

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the "Termination Date"), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Exhibit B and in the Agency Agreement referred to therein.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for annual renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

The signatures of the representative of the Company, where indicated below, will indicate that the Company has accepted the terms of this Sales Tax Letter.

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Maureen Babis
Deputy Executive Director

AGREED AND ACCEPTED:

FEDERAL EXPRESS CORPORATION

By:_____
Name: Graham Smith
Title: Vice President,
Properties and Facilities

EXHIBIT A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements**. With respect capital improvements to the Facility:

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility;

(b) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

(ii) **Personal Property**. With respect to tangible personal property to be used or installed for permanent use (for the useful life of such item) at the Facility and which does not constitute a capital improvement: purchases or leases of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, including mainframe computers (and peripherals), personal computers, telecommunications equipment, business machines and software, but excluding motor vehicles that are licensed by the Department of Motor Vehicles for use on public highways or streets, fine art, plants, objects d'art and other similar decorative items, and ordinary office supplies such as pencils, paper clips and paper.

(iii) **Services**. With respect the eligible items identified in (i)(a) and (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

EXHIBIT B

FORM ST-60–REQUIRED PROCEDURES

Introduction. Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

Required Procedures. In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form-ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, **must enter in a Agency Agreement** with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

"a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* _____ dated _____, 200_ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A [*attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company*].

b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.

c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Exhibit B).

d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.

e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption; and (c)

the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.

f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility). If the Agent fails to comply with the foregoing requirement, the Agent 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 Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.

g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.

h) The Agent represents and warrants that it is not a Prohibited Person. **Prohibited Person** shall mean (i) any Person (defined to include any individual or other legal entity) (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 of New York (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.

i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent's Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company's status as agent of the Agency shall result in the immediate termination of the Agent's status as an agent of the Agency.

j) The Agency shall be a third party beneficiary of the Agent Agreement."

2. **Complete and Submit Form ST-60 to the Agency**. Following the execution and delivery of a Agency Agreement, **the Company must submit to the Agency a fully completed Form ST-60** (the form of which is attached as Addendum A hereto) that includes the name, address, Employer

Identification Number, the date the Agent's work in connection with the Project will end and other required information with respect to such Agent at the following address:

New York City Industrial Development Agency
110 William Street, 4th Floor,
New York, New York 10038
Att: Compliance Department, Form ST-60 Compliance

The submission to the Agency by the Company on behalf of an Agent of a Form ST-60 for execution by the Agency shall constitute a representation by the Company to the Agency that an Agency Agreement that substantially complies with Section 1 above has been duly authorized, executed and delivered by the necessary parties thereto.

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

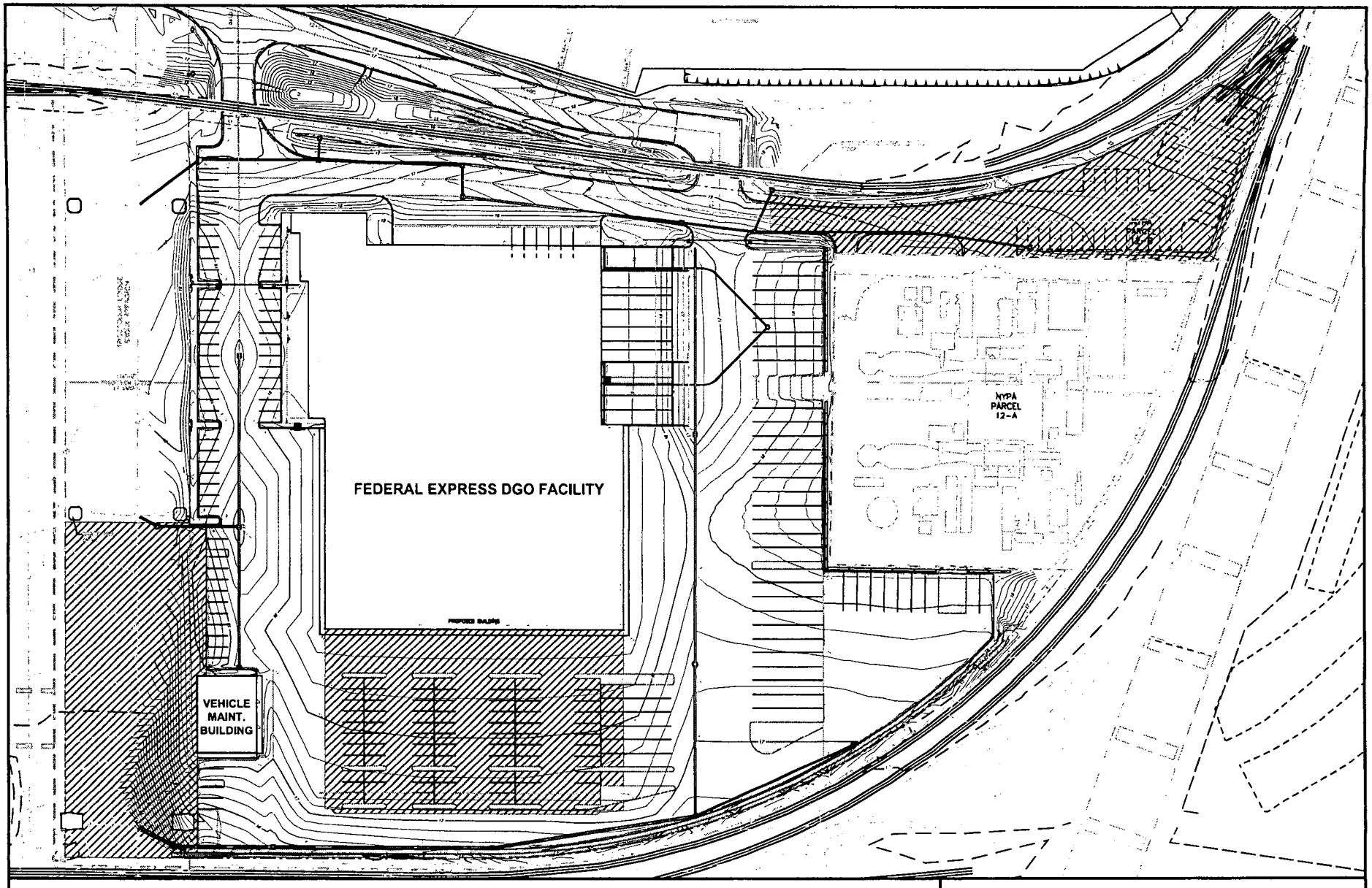
Addendum A

FORM ST-60

SCHEDULE H

SITE PLAN

See Attached.



PLAN

EarthTech
40 BRITISH AMERICAN BLVD.
LATHAM, NEW YORK 12110
(518) 951-2200

LEGEND

AREA OF ALTERNATIVE SURFACE TREATMENT
EITHER ASPHALT CONCRETE PAVEMENT OR CAP
WITH 2 FT. OF CLEAN FILL

NORTH

Scale in Feet
0 60' 120'

AREA FOR ALTERNATIVE SURFACE TREATMENT

FEDERAL EXPRESS DGO FACILITY
HARLEM RIVER YARD
INTERMODAL TRANSPORTATION
AND DISTRIBUTION CENTER
BRONX COUNTY, NEW YORK

88105

SEPTEMBER 5, 2006

SCHEDULE I

CERTIFICATE OF COMPANY REGARDING OCCUPANCY

The undersigned, an Authorized Representative of Federal Express Corporation, a Delaware corporation (the "Company"), DOES HEREBY CERTIFY to the New York Industrial Development Agency (the "Agency"), pursuant to Section 6.21 of the Lease Agreement (FedEx - HRY), dated as of December 1, 2006 (the "Lease Agreement") between the Agency and the Company that:

1. The Company intends to occupy the Facility on _____ (the "Occupancy Date").

2. The Company has obtained insurance at least sufficient to satisfy the requirements of Section 4.5 of the Lease Agreement (including but not limited to Section 4.5(a)(ii) thereof), such insurance shall be effective at least ten (10) business days prior to the Occupancy Date, and certificates of insurance covering such risks are attached hereto.

3. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

FEDERAL EXPRESS CORPORATION

By:_____
Name:
Title: