

Lease Agreement

LEASE AGREEMENT

Dated as of December 1, 2006

by and between

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

and

GOURMET BOUTIQUE, L.L.C.

\$4,470,000

New York City Industrial Development Agency
Industrial Development Revenue Bonds, Series 2006A
(Gourmet Boutique, L.L.C. Project)

\$1,530,000

New York City Industrial Development Agency
Industrial Development Revenue Bonds, Series 2006B
(Gourmet Boutique, L.L.C. Project)

Affecting the Land generally known by the street address
144-01 157th Street, Jamaica, New York,
in the County of Queens, City and State of New York
as more particularly described in Appendix B to this Agreement
and which is also known as Block 15012, Lot 6
on the Official Tax Map of Queens County

Record and Return to:
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes III, Esq.
File No. 90570.236

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of December 1, 2006 (this "Agreement"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **GOURMET BOUTIQUE, L.L.C.** (the "Lessee"), a limited liability company duly organized and existing under the laws of the State of New York, having its principal office at 165-35 145th Drive, Jamaica, New York 11434, party of the second part:

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I 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 and which may include or mean a civic facility, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Lessee has entered into negotiations with the Agency for the financing of (i) the improvement and equipping of an approximately 50,000 square foot manufacturing and distribution facility located on an approximately 54,000 square foot parcel of land located at 144-01 157th Street, in Jamaica, New York 11434 (the "Facility"), which Facility is leased by the Lessee and will be in its business of manufacturing and distributing prepared and processed foods, and (ii) certain costs of issuance relating to the issuance of the Series 2006 Bonds (clauses (i) and (ii) comprise and are hereinafter referred to collectively as the "Project"); and in furtherance of said purpose, on September 12, 2006, the Agency adopted a resolution (the "Bond Resolution") authorizing the Project, and undertaking to permit the issuance of its industrial development revenue bonds to finance in part the Project and thereupon to lease the Facility to the Lessee; and

WHEREAS, Agency financing assistance is necessary to provide employment in, and is beneficial for the economy of, The City of New York and is reasonably necessary to induce the Lessee to proceed with the Project; and

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project and for a portion of incidental and related costs thereto, will issue and sell its Industrial Development Revenue Bonds (Gourmet Boutique, L.L.C. Project), Series 2006 in an aggregate principal amount of \$6,000,000 (the "Series 2006 Bonds"), all pursuant to the Act, the Bond Resolution and an Indenture of Trust dated

as of even date herewith by and between the Agency and U.S. Bank National Association, as Trustee (the "Indenture") securing said Bonds; and

WHEREAS, the Agency, in order to provide funds to accomplish the purposes herein set forth, from time to time, subject to the terms and conditions hereof and of the Indenture, may issue Additional Bonds (as hereinafter defined) under and pursuant to the Indenture;

WHEREAS, Rochester Fund Municipals and/or Limited Term New York Municipals or any fund sponsored by OppenheimerFunds, Inc. shall be the initial purchaser of the Series 2006 Bonds and, subject to its rights hereunder to transfer the Series 2006 Bonds, shall constitute the Initial Bondholder (the "Initial Bondholder") herein; and

WHEREAS, pursuant to a lease agreement, dated as of July 1, 2006, between AMP Property, L.P., as landlord (the "Owner") and the Lessee, as tenant (as the same may be amended from time to time in accordance therewith and the Security Documents, the "Prime Lease"), the Owner has leased the Facility to the Lessee; and

WHEREAS, concurrently with the execution hereof, the Lessee has subleased the Facility to the Agency pursuant to a Company Lease Agreement, dated as of December 1, 2006, between the Lessee and the Agency; and

WHEREAS, concurrently with the execution hereof, the payment of the principal of, redemption premium, if applicable, and interest on the Series 2006 Bonds, and the payments, obligations, covenants and agreements of the Lessee under this Lease Agreement, will be guaranteed by the Lessee (the "Guarantor"), all pursuant to a guaranty agreement with the Trustee dated as of December 1, 2006 (the "Guaranty Agreement");

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1. Definitions. Terms not otherwise defined herein shall have the same meanings as used in the Indenture hereinbelow defined. The following terms shall have the following meanings in this Agreement:

Additional Bonds shall mean any Bonds of a Series, other than the Series 2006 Bonds, authorized to be issued pursuant to a Supplemental Indenture and issued under and pursuant to the Indenture.

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, dated as of December 1, 2006, between the Agency and the Lessee, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director or 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 gives written notice to the Trustee and the Lessee, and (ii) in the case of the Lessee, the President, the Vice President, the Treasurer, the Secretary or the Business Manager or any other officer or employee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee gives written notice to the Trustee and the Agency.

Bonds shall mean, collectively, the Series 2006 Bonds and any Additional Bonds.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder.

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Lessee, as landlord, and the Agency, as tenant.

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

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

Facility Equipment shall mean (i) all fixtures, machinery, equipment, chattels and articles of personal property and all appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located in the Land and/or the Improvements located thereon or placed on any part thereof, though not attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and all other property used in connection with the operations of the Lessee and financed with the proceeds of the Bonds from the Land and/or the Improvements located thereon or adapted for use therein, including, without limitation, any machinery, equipment and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto, but excluding Lessee's Property within the meaning of Section 4.1(c) hereof and (ii) all machinery, equipment and other personal property installed by the Lessee prior to the date hereof or Existing Facility Property released pursuant to Section 4.2 hereof.

Facility Realty shall mean the approximately 50,000 square foot manufacturing and distribution facility located at 144-01 157th Street, Jamaica, New York 11437.

Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31, or such other year of similar length as to which the Lessee

shall have given prior written notice thereof to the Agency and the Trustee at least ninety (90) days prior to the commencement thereof.

Guaranty Agreement shall mean the Guaranty Agreement dated as of even date herewith, from the Lessee, as guarantor, to the Trustee.

Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the effective date hereof 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, but excluding any improvements released pursuant to Section 4.2 hereof and expressly excluding any improvements existing on the effective date hereof or any other improvements made at Lessee's sole cost and expense and not from the proceeds of bonds.

Indenture shall mean the Indenture of Trust, dated as of even date herewith, by and between the Agency and the Trustee, as from time to time may be amended or supplemented by Supplemental Indentures in accordance with Article IX of the Indenture.

Independent Engineer shall mean a person (not an employee of either the Agency, the Lessee or any affiliate thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Lessee, and approved, in writing, by the Agency (which approvals shall not be unreasonably withheld).

Initial Bondholder shall mean the Rochester Fund Municipals and/or Limited Term New York Municipals and/or Oppenheimer AMT-Free New York Municipals and their successors or any fund sponsored by OppenheimerFunds, Inc. and its successors, for so long as Rochester Fund Municipals, Limited Term New York Municipal Fund or Oppenheimer AMT-Free New York Municipals or any fund sponsored by OppenheimerFunds, Inc. shall, collectively, be the sole Holders of the Bonds.

Land shall mean the Facility Realty.

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

Lessee shall mean Gourmet Boutique, L.L.C. and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

Opinion of Counsel shall mean a written opinion of counsel, who may (except as otherwise expressly provided in the Indenture or this Agreement) be counsel for the Lessee or the Agency and who shall be acceptable to the Agency and the Trustee (such approvals not to be unreasonably withheld), and which opinion shall be in a form reasonably acceptable to the Agency and the Trustee.

Permitted Encumbrances shall mean:

- (i) this Agreement and the Company Lease;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) utility, access and other easements and rights-of-way, restrictions and exceptions that will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;
- (iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder;
- (v) those exceptions to title, including an existing mortgage, to the Facility enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof insuring the Agency's leasehold title interest in the Facility, copies of which are on file at the principal corporate trust office of the Trustee and at the office of the Agency;
- (vi) any mortgage, lien, security interest or other encumbrance which exists in favor of the Trustee;
- (vii) any lien created in compliance with Section 6.10 hereof.
- (viii) liens arising out of judgments or awards against Lessee with respect to which an appeal or proceeding for review is being prosecuted diligently and in good faith;
- (ix) materialmen's, mechanics or other like liens for amounts the payment of which is not yet delinquent or is being contested diligently and in good faith; and
- (x) any mortgage, lien or other encumbrance to which the Prime Lease is now or hereafter shall be subordinate.

Plans and Specifications shall mean the plans and specifications for Project, which have been approved in writing by an Authorized Representative of the Agency, as such plans and specifications may change from time to time as permitted by Section 2.1 of this Agreement.

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

the City, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Project shall mean the improvement and equipping of an approximately 50,000 square foot manufacturing and distribution facility located on an approximately 54,000 square foot parcel of land located at 144-01 157th Street, in Jamaica, New York 11434, which will be used by the Lessee in its business of manufacturing and distributing prepared and processed foods.

Sales Tax Benefit shall mean the sales and use tax exemptions conferred upon the Lessee pursuant to the Sales Tax Letter.

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

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

Security Documents shall mean, collectively and severally, the Company Lease Agreement, the Lease Agreement, the Guaranty Agreement and the Indenture, together with any and all other agreements or instruments delivered or assigned to the Trustee as security for the payment of the principal of and redemption premium, if any, and interest on the Bonds.

Series 2006 Bonds shall mean the Agency's Industrial Development Revenue Bonds (Gourmet Boutique, L.L.C. Project), Series 2006 issued, executed, authenticated and delivered pursuant to Article II of the Indenture.

State shall mean the State of New York.

Trustee shall mean U.S. Bank National Association, in its capacity as Trustee, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

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

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

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

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

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

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

Section 1.4. Findings by Agency. (a) The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the leasing of the Facility to the Lessee is necessary to induce the Lessee to proceed with the Project.

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2006 Bonds in an aggregate principal amount of \$6,000,000. The Series 2006 Bonds will mature, bear interest, be redeemable and have the other terms and provisions specified in the Form of Bonds set forth in the preambles to the Indenture.

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

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its articles of organization or operating agreement, 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.

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

(c) Expenses for supervision by the officers or employees of the Lessee and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such Persons were specifically employed for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Lessee as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(d) Except as previously described in writing by the Lessee to the Agency, (i) there is no action or proceeding pending or threatened by or against the Lessee by or before any court or administrative agency that would adversely affect the ability of the Lessee to perform its obligations under this

Agreement and each other Security Document to which it shall be a party and (ii) all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Security Documents have been obtained, provided it is understood that there are certain authorizations, consents and approvals required in connection with the construction of the Project and the operation of the Facility upon completion of the Project that would not customarily be obtained as of the date hereof and which the Lessee reasonably expects to be obtained in a timely fashion.

(e) The property included in the Facility as part of the Project is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.

(f) The Facility will constitute a "project" under the Act.

(g) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee through the issuance of the Bonds and as contemplated by this Agreement is reasonably necessary to induce the Lessee to proceed with the Project.

(h) The total of those certain Project Costs being financed with proceeds of the Bonds is expected to be at least equal to the aggregate principal amount of the Bonds, and such Project Costs are expected to be less than the total cost of the Project.

(i) No part of the proceeds of the Bonds will be used to finance inventory or will be used for working capital or to refinance any cost other than costs of acquisition, construction and renovation of the Facility, and such costs of acquisition, construction and renovation shall constitute Project Costs.

(j) 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.

(k) No part of the proceeds of the Bonds (or any earnings thereon) 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.

(l) This Agreement and the other Security Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms except to the extent that the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and by application of general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(m) The Lessee, upon completion of the Project, will be in compliance with all Legal Requirements applicable to the Project and the operation of the Facility.

(n) The Project has been designed, and upon completion will be, in compliance with all Legal Requirements; and the Lessee intends to 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.

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

(p) The square footage of the Facility is approximately 50,000 square feet.

(q) Neither the Lessee nor any affiliate thereof is a Prohibited Person.

(r) 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.

ARTICLE II

THE PROJECT

Section 2.1. The Project. (a) The Lessee shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2006 Bonds good and valid leasehold interest to the Facility, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2006 Bonds deposited in the Project Fund to the extent permitted by Section 2.2 hereof and Section 5.02 of the Indenture. In addition, leasehold title to all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility and purchased with proceeds of the Bonds shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility or payment therefor, whichever shall occur first. The Lessee shall take all action necessary to so vest title to such materials, equipment, machinery and other property in the Agency and to protect such title against claims of any third parties.

(b) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring, constructing and installing the Improvements comprising part of the Project and the Facility Equipment on or in the Facility Realty, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons, and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in the acquisition, construction and equipping of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally represents, warrants, covenants and agrees that it will complete the Project, or cause the Project to be completed, in accordance with the Plans and Specifications, in a first class worker-like manner, free of defects in materials and workmanship (including latent defects) by December 1, 2007; provided, however, the Lessee may revise the scope of the Project and may amend the Plans and

Specifications, in either case subject to the prior written consent of the Agency (which consent shall not be unreasonably withheld) if such revisions or amendments would result in an increase in the estimated total cost of the Project of more than 5% of the estimated total cost of the Project before such revisions or amendments. Any amounts recovered by the Lessee, as agent of the Agency, by reason of damages, refunds, adjustments or otherwise in connection with the Project, after deduction of the reasonable expenses incurred in such recovery, if recovered prior to the date of completion of the Project and in an amount exceeding \$250,000, shall be deposited into the applicable subaccounts of the Project Fund and made available for payment of Project Costs, or, if such amount is in excess of \$250,000 and is recovered after such date of completion and not required to be applied pursuant to the provisions of Section 5.1 hereof, such amount shall be applied by the Trustee in accordance with the provisions of Section 5.02(d) of the Indenture. The Agency and the Lessee acknowledge and agree that the cost of the Project shall be paid from amounts on deposit in the Project Fund established under, and subject to, the Indenture derived from (i) the proceeds of the sale of the Bonds and interest earnings required by the terms of the Indenture to be deposited therein, and (ii) to the extent such amounts in the Project Fund are insufficient to pay all costs of the Project, from other available funds of the Lessee. In the event that amounts on deposit in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the amounts in the Project Fund available therefor and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Owners of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement.

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

(d) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facility, all of which will be done in compliance with all Legal Requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Promptly upon completion of the Project, the Lessee will obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee immediately upon receipt thereof.

(e) The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Lessee, in the form attached as Schedule E hereto, delivered to the Agency and the Trustee, stating, based upon the Lessee's review of the certification of the Lessee's architect and except for any Project Costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee, (i) that the Project has been completed substantially in accordance with the Plans and Specifications and the date of completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that the Agency has a good and valid leasehold interest in the Facility (which certification may be delivered in reliance on a leasehold title informational continuation update), that all property constituting the Facility is subject to this Agreement, (v) that, in accordance with

all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project. Such certificate shall further certify as to the determination of the Rebate Requirement as provided in the Tax Certificate and the Indenture and shall direct any transfer to, or make payments of amounts for deposit in, the Rebate Fund.

Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being, (ii) that it is given only for the purposes of this Section and Section 5.02(d) of the Indenture, and (iii) that no Person other than the Agency and the Trustee may benefit therefrom. Such certificate of the Authorized Representative shall be accompanied by (i) a temporary certificate of occupancy, followed by a permanent certificate of occupancy when available, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) evidence satisfactory to the Agency that all real property taxes and assessments, or payments in lieu of taxes payable under Section 4.3 hereof, with respect to the Facility Realty have been paid in full, (iii) a survey of the Facility prepared by a licensed surveyor at the Lessee's sole cost and expense, which survey shall (subject to Permitted Encumbrances) (1) locate the building structures and improvements constructed as part of the Facility without any encroachment by any building or structural improvement on premises adjoining the Land, (2) show the location of all building structures and improvements constituting part of the Facility within lot and building lines in compliance with the applicable zoning requirements, and (3) indicate all rights of way and rights of others of record with respect to the Facility.

Section 2.2. Issuance of Series 2006 Bonds; Application of Proceeds of Series 2006 Bonds; Additional Bonds. (a) Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2006 Bonds in the aggregate principal amount of \$6,000,000. The proceeds of sale of the Series 2006 Bonds shall be applied as follows: (i) an amount representing accrued interest, if any, on the Series 2006 Bonds to their date of delivery to the initial purchasers thereof, shall be deposited in the Interest Account of the Bond Fund; and (ii) the balance of the proceeds shall be deposited in the Project Fund to pay Project Costs.

(b) The application of the proceeds of sale of the Series 2006 Bonds is subject to the trust fund provisions of Section 13 of the Lien Law of the State. The Lessee shall receive all advances of the proceeds of the Series 2006 Bonds to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the cost of the improvement and shall apply the same first to such payment before using any part thereof for any other purpose permitted hereunder.

(c) The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture and so long as the Lease Agreement is in effect, one or more series of Additional Bonds may be issued, authenticated and delivered upon original issuance for any or all of the following purposes: (i) providing funds in excess of the net proceeds of insurance and condemnation awards necessary to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (ii) providing for the financing or refinancing of Project Costs in connection with the acquisition, construction or installation of additional Improvements or Facility Equipment for incorporation into the Facility as part of the Project, (iii) refunding any Agency Bonds issued by the Agency or any indebtedness incurred by the Lessee to finance or refinance the acquisition or improvement of the Facility, and (iv) providing additional funds for a debt service reserve fund.

Section 2.3. Title Insurance. Simultaneously with the delivery of each Series of Bonds to the original purchaser(s) thereof, the Lessee will obtain and deliver to the Agency (a) a leasehold title insurance policy, in the amount of \$500,000, insuring the Agency's leasehold interest in the Facility against loss as a result of defects in title, and (b) a survey of the Facility certified to the Lessee, the title company, the Agency and the Trustee. The title insurance policy shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Agency and the Trustee; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement referred to in Section 5.02(c) of the Indenture; (4) a pending disbursements clause satisfactory to the Agency and the Trustee; and (5) such other matters as the Agency and/or the Trustee shall reasonably request. Any proceeds of such title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in title. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Redemption Account of the Bond Fund for application, at the written direction of an Authorized Representative of the Lessee delivered to the Trustee, to the defeasance or redemption of Bonds. Any proceeds of such leasehold or mortgagee title insurance insuring against loss as a result of defects affecting the Agency's interest pursuant to the Company Lease or the Trustee's interest as holder of a lien on the Facility pursuant to the Agency's pledge under the Indenture shall be paid to the Trustee and deposited by the Trustee in the Redemption Account of the Bond Fund for application, at the written direction of an Authorized Representative of the Lessee delivered to the Trustee, to the purchase, redemption or defeasance of Bonds.

Section 2.4. Labeling of Facility EquipmentThe Lessee will cause each major item of machinery, equipment and other property constituting a part of the Facility Equipment to be labeled "Property of New York City Industrial Development Agency" by affixing a plate, stenciling, tagging or other method; provided, however, that no such item need be so labeled where impractical because of its size or its nature or the nature of its operation. The Lessee will also keep on file at the Facility Realty an index of all such machinery, equipment and other property constituting a part of the Facility Equipment.

Section 2.5. Limitation on Sales Tax Exemption.

(a) Any exemption from Sales Taxes resulting from or occasioned by the Agency involvement with the Project shall be limited to purchases of Eligible Materials by or for the Lessee as agent for the Agency pursuant to the Sales Tax Letter, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project.

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Gourmet Boutique, a limited liability company organized and existing under the laws of the State of New York (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 improvement and equipping of an approximately 50,000 square foot manufacturing and distribution facility located on an approximately 54,000 square foot parcel of land located at

144-01 157th Street, in Jamaica, New York 11434 (the "Facility"), which Facility is leased by the Agent and will be in its business of manufacturing and distributing prepared and processed foods (together with the Facility, the "Project"). The capital improvements, materials, 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 the terms and conditions set forth in this paragraph."

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

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

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2006 Bonds and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the completion of the Project as provided in Section 2.2 hereof or (3) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

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

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

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

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

the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Eligible Materials unless such item is used solely by the Lessee or the Sublessee at the Facility,

(C) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, or (iii) computer software unless the computer software is of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure for use only at the Facility Realty by the Lessee or the Sublessee,

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.6(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(E) shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee or the Sublessee at the Facility,

(F) shall not be available for any tangible movable personal property (including computer software), or trade fixture, for use by any person other than the Lessee or the Sublessee at the Facility,

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

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

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

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

(d) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.6(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(e) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend both to those Project Costs the

payment for which shall first be made from the proceeds of the Series 2006 Bonds as well as those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2006 Bonds.

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

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

(h) The Lessee shall on February 15, 2007 and on each February 15 thereafter until the February 15 following the calendar year in which the Sales Tax Letter shall have been terminated, cancelled, or expired, file a statement (Form ST-340 in the form attached hereto as Schedule F or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement related to a statement filing with the New York State Department of Taxation and finance, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials on the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee, subject to any rights of the Lessee to cure such failure permitted to the Lessee under applicable law. 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 Lessee agrees to submit to the Agency on July 1 of each year, beginning July 1, 2007, a completed Benefits Report in the form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on the June 30 immediately preceding such August 1.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1. Lease of the Facility. The Agency hereby subleases the Facility to the Lessee, and the Lessee hereby subleases the Facility from the Agency, in each case for and during the term herein and subject to the terms and conditions herein set forth. The Lessee shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated in accordance with all Legal Requirements and as a "project" within the meaning of the Act. The Lessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy

affecting the Facility or any agreement applicable to 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. This Agreement is and shall be subject and subordinate in all respects to the Company Lease.

Section 3.2. Duration of Term. The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on the earliest of (i) June 30, 2032, (ii) the expiration or termination of the Prime Lease, or (iii) such earlier or later date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility.

Section 3.3. Rental Provisions. (a) Rentals. The Lessee covenants to make rental payments which the Agency agrees shall be paid by the Lessee directly to the Trustee. Such rental shall to the extent not paid from amounts on deposit in the Capitalized Interest Account of the Project Fund, be paid during the term of this Agreement, by wire transfer, in consecutive quarterly payments not later than the Business Day immediately preceding each February 1, May 1, August 1, December 1, commencing February 1, 2007. Such rental payments shall be made until the principal or Redemption Price, if applicable, and interest on the Bonds shall have been fully paid, or provision for the payment thereof shall have been made in accordance with the provisions of Section 10.01 of the Indenture. The amount of such rental payments shall be an amount sufficient, together with any amounts then available in the Bond Fund, to enable the Trustee to make timely payment of the principal (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture) or Redemption Price, if applicable, of, and interest on (including interest due upon the occurrence of an Event of Default or upon a Determination of Taxability), the Bonds becoming due. Exhibit C to this Agreement sets forth the schedule of rental payments to be made by the Lessee, determined as of the date of delivery of the Bonds. Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal or Redemption Price, if applicable, of, and interest on (including interest due upon the occurrence of an Event of Default or upon a Determination of Taxability), the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Agency shall, pursuant to the Indenture, require the Trustee to promptly give notice of such deficiency to the Lessee, and the Lessee agrees to pay forthwith the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund. Any such payments, and any other amounts payable to the Agency hereunder, shall constitute rental payments under this Section 3.3. In the event the Lessee should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full. The Lessee agrees to pay additional amounts set forth in the Indenture to be paid by the Lessee with respect to interest on the Series 2006 Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Missed Payments. In the event the Lessee should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full.,

(c) Consent to Assignment of Rentals. Pursuant to the Indenture, the Agency shall pledge and assign to the Trustee as security for the Bonds all of the Agency's right, title and interest in, to and under this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund, in accordance with the Indenture. The Lessee hereby consents to the above-described pledge and assignment of this Agreement. The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall have the

power, authority, rights and protections provided to it in the Indenture. The Lessee further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions required of the Agency under the Indenture.

(d) Rebate Payments. The Lessee covenants and agrees to provide to the Trustee sufficient moneys as necessary to meet the Rebate Requirement described in the Tax Certificate.

(e) Prepayments. The Lessee shall have the right to make advance rental payments under Section 8.1 of this Agreement to the Trustee for deposit in the Redemption Account of the Bond Fund as and to the extent provided in the Indenture for redemption of the Bonds.

(f) Defeasance. No further rental payments need be made to the Agency during the term of this Agreement when and so long as the amount of cash and/or Government Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in Section 10.01 of the Indenture.

(g) Additional Rentals. Any payments made to the Trustee to provide the Trustee with sufficient moneys as necessary to meet the Rebate Requirement in accordance with subsection (d) of this Section shall constitute additional rental payments payable under this Section.

Section 3.4. Obligation of Lessee Unconditional. The obligation of the Lessee to pay rentals and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be an absolute, unconditional and general obligation of the Lessee, irrespective of any defense or any rights of set-off, recoupment, counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Owner of any Bond. The Lessee further agrees that the payments required by this Agreement shall be paid by the Lessee to the Trustee and the Agency whether or not any user or occupant of any part of the Project is delinquent in the payment of rentals or other charges owed to the Lessee, and whether or not any such person receives either partial or total reimbursement from any source as a credit against such payment. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

Section 3.5. Right of Set-Off. The Lessee hereby grants to the Agency for the equal and ratable benefit of all Bondholders a lien on and right of set-off against all the deposits, credits and property of the Lessee and any collateral of the Lessee now or hereinafter in the possession, under the control of or in transit to the Agency for all the Lessee's liabilities and payment obligations under this Agreement and the other Security Documents to which it is a party, and agrees that the same may be applied against such liabilities and payment obligations at any time after an Event of Default has occurred and is continuing under this Agreement.

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

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

(a) The Lessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) as a result of such alterations or additions, the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and workerlike manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) (A) if such additions or alterations are estimated to exceed \$500,000, such alteration or addition shall be conducted under the supervision of an Independent Engineer, or (B) if such additions or alterations are estimated to exceed \$1,000,000, such alterations or additions shall be conducted under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Trustee and the Agency (which approvals shall not be unreasonably withheld or delayed), and (v) such additions or alterations do not change the nature of the Facility so that it would not constitute a qualified "project" as defined in and as contemplated by the Act. Subject to Section 4.1(c) hereof, all alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement and the Indenture, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey leasehold title to such property to the Agency and to subject such property to this Agreement and the lien and security interest of the Indenture, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(b) The Lessee shall have the right to install or permit to be installed at the Facility, as part of the Project or otherwise, machinery, equipment and other personal property and any appurtenances or additions thereto, and substitutions or replacements thereof, at the Lessee's own cost and expense and not from the proceeds of Bonds (the "Lessee's Property") without conveying title to such property to the Agency nor subjecting such property to this Agreement. The Lessee's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

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

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

Section 4.2. Removal of Property of the Facility. (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty (the "**Existing Facility Property**") and thereby acquiring such Existing Facility Property, provided that:

(i) such Existing Facility Property is substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and utility and (B) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances; or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms-length bona fide transaction, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition, provided that no such payment shall be required when such amounts in connection with any removal or related series of removals does not exceed \$250,000;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility as a "project" within the meaning of the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Redemption Account of the Bond Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder.

(b) The Lessee shall deliver or cause to be delivered to the Agency and the Trustee appropriate documents conveying to the Agency title to any property installed or placed upon the Facility pursuant to Section 4.2(a)(i) hereof and subjecting such substitute or replacement property to this Agreement, and upon written request of the Lessee, the Agency shall deliver and shall cause the Trustee to deliver to the Lessee appropriate documents releasing all liens and security interests on any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including

reasonable counsel fees) incurred in subjecting to this Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2.

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

(d) Within 120 days after the close of each Fiscal Year of the Lessee (i) during which Fiscal Year action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof involving substitute or replacement property having a cost in excess of \$250,000 or disposed of property with proceeds in excess of \$250,000, the Lessee shall furnish to the Agency and the Trustee a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) during which Fiscal Year of the Lessee no action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof (or, the only action taken was with respect to substitute or replacement property having a cost less than \$250,000 or the amount received for property disposed of was less than \$250,000), the Lessee shall furnish to the Agency and the Trustee a certificate to that effect.

Section 4.3. Payment in Lieu of Real Estate Taxes.

(a) Description and Address of Project:

The Project consists of the improvement and equipping of an approximately 50,000 square foot manufacturing and distribution facility to be used by the Lessee in its business of manufacturing and distributing processed and prepared foods. The Facility Realty is located at 144-01 157th Street in Jamaica, New York 11434, being Block 15012, Lot 6 on the Official Tax Map of Queens County.

(b) Payments Prior to PILOT Commencement Date:

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

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

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

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

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

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

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

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

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

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2028	\$109,500
July 1, 2028 - June 30, 2029	\$87,600
July 1, 2029 - June 30, 2030	\$65,700
July 1, 2030 - June 30, 2031	\$43,800
July 1, 2031 - Expiration Date	\$21,900

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Subsequent Alterations and Improvements:

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

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

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

(g) General Payment Provisions:

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency, or at such other times, in either case as the

Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment into a special trust fund.

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

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

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

(h) Apportionment of Payments after Transfer:

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

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

(i) Withdrawal of Real Estate Tax Abatements:

The Lessee understands and agrees that the Lessee is required, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, used and/or occupied by any other Person other than the Lessee, for so long as such use and/or occupation shall continue. The Lessee represents to the Agency that no portion of the Facility Realty is used and/or occupied, or is intended to be used and/or occupied, by Persons other than the Lessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee

ever intends to permit any Person other than itself to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

The Lessee further agrees to furnish the Agency, in substantially the form provided in Schedule C attached hereto, with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth inter alia, all Persons other than the Lessee or Affiliates of the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty.

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

(j) *QEZE Tax Credits:*

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

(k) *Survival of Obligations:*

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

Section 4.4. Payment of Impositions. (a) Subject to its rights of contest in accordance with Section 4.4(b), the Lessee shall pay when the same shall become due all taxes 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 Lessee in the Facility, or the rentals 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 Lessee any notice, bill or other statement received by the Agency

concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if (1) such proceeding shall suspend the execution or enforcement of such Imposition against the Facility or any part thereof or any interest therein, or in this Agreement or the Company Lease, of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts 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) neither the Agency nor the Trustee would be in any reasonable danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings; provided, however, if such proceeding could result in the Agency and the Trustee being in any reasonable danger of civil liability (including accrual of interest, fines and/or penalties), (y) the Lessee shall deliver a written confirmation to the Agency and the Trustee that the Lessee shall indemnify and hold the Agency and the Trustee harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Lessee shall provide to the Agency and the Trustee such security as the Agency and the Trustee may reasonably require.

(c) At the written request of the Agency, the Lessee shall provide to the Agency all reasonable information as may be requested with respect to any Imposition (as described in Section 4.4(a) hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Lessee in connection therewith.

Section 4.5. Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other entities of like size and type as that of the Lessee. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (g), inclusive, 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 & Contractors Protective Liability Insurance for the benefit of the Lessee, the Agency and the Trustee in a minimum amount of \$5,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) During any period of construction, renovation, improvement or reconstruction of any of the Facility, the Lessee shall cause its general contractor to maintain liability insurance as a primary insured, and naming the Lessee 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 Lessee) on a "per project aggregate limit" (or any functional equivalent) for bodily and personal injury claims, which insurance shall also cover claims against the Lessee 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 Lessee and/or the Agency arising from such contractor's or subcontractor's negligent activity;

(iii) Commercial general liability insurance (including contractual liability coverage together with any umbrella liability insurance), 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, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a commercial general liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or a deductible amount, except as may be otherwise approved in writing by the Agency in its sole discretion;

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

(v) Such other insurance in such amounts and against such insurable hazards as the Agency or the Trustee at the direction of the Holders of a majority in aggregate principal amount of the Bonds Outstanding from time to time may reasonably require.

(b) All Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies admitted in and authorized to write such insurance in the State and having an A.M. Best rating that is commercially reasonable and customarily provided by other enterprises of like size and type as that of the Lessee. The Agency may change such rating requirements in future years for its projects on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage. At least once every two fiscal years, the Lessee agrees to deliver a certificate of an independent insurance consultant to the Trustee which indicates that the insurance then maintained by the Lessee meets the requirements of Section 4.5(a) hereof.

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

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

(ii) provide that all insurance proceeds in excess of \$500,000 with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause and as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Bond Fund;

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

(iv) provide that in respect of the respective interests of the Agency and the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any

other Person and shall insure the Agency and the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

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

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency or the Trustee until at least thirty (30) days, or ten (10) days if due to nonpayment of premium, after receipt by the Agency and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration or change;

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

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

(d) The Net Proceeds of any Specific Coverage received with respect to any loss or damage to the property of the Facility shall be deposited in the Bond Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) Concurrently with the original issuance of the Series 2006 Bonds, the Lessee shall deliver or cause to be delivered to the Agency and the Trustee the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the execution and delivery of this Agreement, (A) a broker's certificate of coverage, and (B) certificate of liability insurance, evidence of property insurance, and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

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

Section 4.6. Advances by Agency or Trustee. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or any Bondholder holding 100% of the Bonds Outstanding, after first notifying the Lessee of any such failure on its part, upon notice by the Agency, the Trustee or such Bondholder (except if any emergency condition shall exist) may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or such Bondholder under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or such Bondholder, as the case may be, shall become an additional obligation of the Lessee to the Agency, the Trustee or to such Bondholder, as the case may be, which amounts, together with interest thereon at the rate per annum equal to the rate of interest established by the Trustee from time to time as its prime rate in New York, New York (which prime rate shall be effective for the purposes hereof on the date on which such rate is effective for the Trustee's purposes), plus five percent (5%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency, the Trustee or such Bondholder, as the case may be. Any remedy herein vested in the Agency or the Trustee for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency and the Trustee for the collection of all such amounts so advanced.

Section 4.7. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Legal Requirements. The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Agency or the Trustee being in any reasonable danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee to protect the security intended to be offered by the Security Documents.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole, or part (with a replacement cost in excess of \$250,000) of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility for a period exceeding six months 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 rent or other amounts payable by the Lessee under this Agreement, and

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

(b) Upon the occurrence of a Loss Event, any Net Proceeds in excess of \$250,000 derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund and the Lessee shall either:

(i) in the Event of a Loss Event at the Facility, at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.06 of the Indenture), promptly and diligently rebuild, replace, repair or restore, or cause to be rebuilt, replaced, repaired or restored, the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee or any Bondowner, nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced), or

(ii) to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, the Lessee shall exercise its option to purchase the Agency's interest in the Facility and make advance rental payments to redeem the Bonds in whole and terminate the Agency's interest in the Facility.

Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency and the Trustee in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (i) above to be exercised in accordance with the provisions of subdivision (i) above.

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.02 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Lessee shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund to be applied to the redemption of Bonds in accordance with the Indenture.

(c) All such rebuilding, replacements, repairs or restorations shall:

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

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Initial Bondholder, for so long as the Initial Bondholder holds 100% of the Bonds, and at all other times, the Trustee (which approval shall not be unreasonably withheld or delayed),

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

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

(v) (A) if the estimated cost of such rebuilding, replacement, repair or restoration is in excess of \$500,000, be effected under the supervision of an Independent Engineer, or (B) if the estimated cost of such rebuilding, replacement, repair or restoration is in excess of \$1,000,000, be effected under the supervision of an Independent Engineer and in accordance with plans and specifications and cost estimates approved in writing by the Agency and the Trustee (which approvals shall not be unreasonably withheld).

(d) Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied and may be invested as provided in the Indenture.

(e) The Agency, the Trustee and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Lessee, so long as an Event of Default shall not have occurred, the Agency and the Trustee (such approvals not to be unreasonably withheld or delayed).

(f) Notwithstanding anything contained herein to the contrary if all or substantially all of the Facility shall be taken or condemned (other than a temporary taking or condemnation for a period of less than six months), or if such taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to purchase the Facility pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Lessee shall thereupon pay to the Trustee for deposit into the Redemption Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any) at the earliest possible date, and to pay the expenses of redemption, the fees and expenses of the Agency, the Trustee and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date, provided that the payment obligation and the obligation of the Lessee to redeem the Bonds in whole under the Section 5.1(f) shall arise when the Lessee shall have received the Net Proceeds in respect of such taking or condemnation.

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property so long as such proceeds, award, compensation or damages are in addition to the Net Proceeds otherwise payable in respect of such casualty or taking.

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

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1. Dissolution or Merger of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a New York limited liability company, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State and organized under the laws of the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its

property, business or assets remaining after the execution and delivery of this Agreement, (iv) not sell, transfer, pledge or otherwise encumber all of substantially all of the assets remaining after execution of this Lease Agreement, and (v) not consolidate with or merge into another or permit one or more entities to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, with the consent of the majority of the Owners of the Bonds (which consent will not be unreasonably withheld or delayed), but subject to the terms of the Letter of Credit and Reimbursement Agreement, consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if (i) the Lessee is the surviving, resulting or transferee entity, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity, (1) such entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, (B) is in good standing in the State, (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and in the Opinion of Counsel delivered to the Agency and the Trustee (x) such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee shall have been a party, and (y) such action does not legally impair the security for the Owners of the Bonds afforded by the Security Documents, and (D) has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer, and (2) the Lessee delivers to the Agency and the Trustee an opinion of Bond Counsel to the effect that such action will not adversely affect the validity of the Bonds or the exclusion of interest on the Bonds from Gross Income for federal income tax purposes.

Section 6.2. Indemnity. (a) The Lessee shall at all times protect and hold the Agency, the Initial Bondholder, the Trustee and the Paying Agent (collectively, the “**Indemnified Parties**” and each an “**Indemnified Party**”) harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed, other than income taxes on the fees paid the Trustee), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising during the term of this Agreement upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the marketing, issuance and sale of the Agency’s Bonds for such purpose, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of any of its obligations under, this Agreement, the Indenture or any other Security Document or other document or instrument delivered in connection herewith or therewith or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or its respective directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Lessee or any other Person who may be about the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability, other than, with respect to each Indemnified Party, losses

arising from the direct gross negligence or willful misconduct of such Indemnified Party, incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee and in good faith with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Improvements and Facility Equipment in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, except as set forth in a certain Phase I Environmental Report, dated June 30, 2006, prepared by LFR Inc., true and complete copies of which the Lessee has delivered to the Agency, the Trustee and the Initial Bondholder, to the best of the Lessee's knowledge, no prior owner of the Improvements and Facility Equipment or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Improvements and Facility Equipment in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Lessee shall, to the extent required by applicable law, keep or cause the Improvements and Facility Equipment to be kept free of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials. The Lessee shall comply with and ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such tenant or subtenant shall be an affiliate of the Lessee, the obligation of the Lessee with respect to such Persons shall be absolute and not limited to best efforts. The Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency and the Trustee, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, this Agreement and (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency and the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive

materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation, excluding, however, such materials as are customarily present in office buildings provided that such materials are handled, stored and disposed of in accordance with applicable Federal, State and local environmental laws. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the environmental audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated in Section 4.7 hereof and throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended with respect to the Agency, to its members, directors, officers, employees, agents and servants and persons under the Agency's control or supervision and with respect to the Trustee and Paying Agent, to any of their respective directors, officers, employees, agents and servants and persons under either the Trustee's or the Paying Agent's control or supervision, as the case may be.

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof and, to the extent not reasonably available, in Section 6.2(c) hereof). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Parties relating to the enforcement of the provisions herein specified.

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

Section 6.3. Compensation and Expenses of Trustee, Paying Agent and Agency. The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay (i) reasonable compensation to the Trustee for its services under the Indenture and all reasonable out-of-pocket expenses (including counsel fees and disbursements) actually incurred by the Trustee in performing its duties thereunder including but not limited to expenses incurred in purchasing, redeeming, exchanging, transferring, registering and preparing new Bonds or making any investments in accordance with the Indenture, (ii) the reasonable compensation and reasonable out-of-pocket expenses of the Paying Agent(s) for the Bonds actually incurred by them in connection with the performance of their services under the Indenture and (iii) the reasonable fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's Bond Counsel in performing services for the Agency in connection with this Agreement or the Indenture or any other Security Document.

The Lessee further agrees to pay any placement agent fees due to Roosevelt & Cross, Incorporated for placement of the Series 2006 Bonds, and the Lessee agrees to indemnify and hold harmless the Initial Bondholder and the Agency against any and all claims in connection therewith.

On the date of the sale and delivery by the Agency of the Series 2006 Bonds, the Lessee shall pay to the Agency its fee of \$53,300 said amount representing the \$55,000 financing fee, plus an annual administrative fee of \$800, less an application fee of \$2,500). The Lessee 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 December in the Consumer Price Index utilizing a base year of 2006) payable on each anniversary thereof until the termination of this Agreement. For purposes of this Section, "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), for the region New York-Northern N.J.-Long Island, NY-NJ-CT-PA (1982-84=100, unless otherwise noted), as published by the U.S. Department of Labor Bureau of Labor Statistics.

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

The Agency will, however, at the written request of the Lessee, and with the prior written consent of the Trustee and the Initial Bondholder, 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, and provided, further, that any consideration received by the Agency or the Lessee from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund for application in connection with the purchase, redemption or defeasance of Bonds. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver and to cause and direct the Trustee 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, and with the prior written consent of the Trustee and the Initial Bondholder, the Lessee may from time to time request in writing to the Agency the release and removal from this Agreement, of any unimproved part of the Facility (on which none of the improvements, including the buildings, structures, improvements, related facilities, major appurtenances, fixtures or other property comprising the Facility are situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver and cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Land and convey leasehold title thereto in the Lessee or such Person as the Lessee may designate subject to the following: (i) any liens, easements, encumbrances and reservations to which leasehold title to said property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to

perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the lien of this Agreement and the Indenture); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless (1) there shall be deposited with the Trustee a certificate of an Independent Engineer, 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 Land and the release so proposed to be made 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; and (2) there shall be deposited with the Trustee an amount of cash for deposit in the Redemption Account of the Bond Fund for application to the purchase, redemption or defeasance of Bonds equal to the greatest of (A) the original cost of such portion of the Land financed with Bond proceeds so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City of New York, (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City of New York, and (C) if such portion is released in connection with the sale of such portion, the amount received by the Lessee upon such sale.

(b) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the rents payable under Section 3.3 hereof or the other payments required to be made by the Lessee under this Agreement.

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, the Lessee, or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Agency, or the Lessee under this Agreement or the Company Lease, other than Liens for Impositions (as defined in Section 4.4) not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and the Trustee and, except where the validity of such Lien is being contested in accordance with the provisions of Section 6.5(b) hereof, take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency and the Trustee), 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 any interest therein, or in this Agreement or the Company Lease, of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts 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) neither the Agency nor the Trustee would be in any reasonable danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings; provided, however, if such proceeding could result in the Agency

and the Trustee being in any reasonable danger of civil liability (including accrual of interest, fines and/or penalties), (y) the Lessee shall deliver a written confirmation to the Agency and the Trustee that the Lessee shall indemnify and hold the Agency and the Trustee harmless from any claims, liabilities, costs or expenses as may derive with respect thereto, and (z) the Lessee shall provide to the Agency and the Trustee such security as the Agency and the Trustee may reasonably require.

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

(d) An Authorized Representative of the Lessee shall certify to the Agency and the Trustee the existence of any utility, access and other easements and rights-of-way, restrictions and exceptions that materially interfere with or impair the Lessee's use and enjoyment of the Facility. Such certification shall be given within 10 days after the Lessee has notice of such action.

Section 6.6. Financial Statements; No-Default Certificates; Compliance with Rule 15c2-12.

(a) The Lessee agrees to furnish to the Agency (at the written request of the Agency) and the Trustee, as soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Lessee, a copy of the annual audited financial statements of the Lessee and its subsidiaries, if any (including balance sheets as at the end of such fiscal year and the related statements of revenues, expenses and changes in fund balances and, if applicable, income, earnings, retained earnings and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles consistently applied, certified by an independent certified public accountants reasonably acceptable to the Agency. The Lessee shall deliver to the Agency (at the written request of the Agency) and the Trustee with each delivery required by Section 6.6(a) hereof, (i) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of such preceding fiscal year of the Lessee, and at all times during such fiscal year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party; provided, however, if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto and (ii) a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, whether such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee and that such insurance is in full force and effect on the date of delivery of such certificate, and that duplicate copies of all policies and certificates thereof (or self-insurance program documents) have been filed with the Agency and the Trustee and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry, no default under or breach of any of the terms hereof which, with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge (the "No Default Certificate").

(c) The Lessee shall immediately notify the Agency and the Trustee of the occurrence of any Event of Default hereunder or any event which with notice or lapse of time or both would constitute an

Event of Default hereunder of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.7. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Indenture, so long as the Lessee shall pay the rent and all other sums 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 Lessee shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Facility, and the Agency shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.8. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.9. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the funds or accounts created under the Indenture upon the expiration or sooner or later termination of the term of this Agreement as provided in this Agreement, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Paying Agents and the Agency in accordance with the Indenture and after all rents and all other amounts payable hereunder and under the other Security Documents shall have been paid in full, and after all amounts required to be paid to the United States government pursuant to the Tax Certificate or the Indenture have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

Section 6.10. Contact Information Form. The Lessee 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 6.11. Issuance of Additional Bonds. The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, but shall not be required, to enter into a Supplemental Indenture and to issue one or more series of Additional

Bonds on a parity with the Series 2006 Bonds and any Outstanding Additional Bonds for the purpose of (i) providing funds in excess of the Net Proceeds for insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (ii) providing extensions, additions or improvements to the Facility or (iii) refunding Outstanding Bonds. If no Event of Default hereunder has occurred and is continuing, and there has been no occurrence of an event or condition which with the giving of notice or the passage of time or both would constitute an Event of Default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request submitted to the Agency on behalf of the Lessee and signed by an Authorized Representative thereof in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement, if necessary, providing, among other things, for the payment by the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

Section 6.12. Redemption Under Certain Circumstances; Special Covenants. (a) Upon the determination by resolution of the members of the Agency that the Lessee is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated (i) in violation of applicable material law or (ii) not as a qualified "project" in accordance with the Act, or (iii) that the Lessee is not in compliance with the provisions of Sections 4.3, 4.5(a)(iii), 6.2 or 8.5 hereof, and the failure of the Lessee within sixty (60) days, with respect to clause (i) or (ii), and ten (10) days with respect to clause (iii) (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), the Lessee covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day or ten (10) day (or longer) period, as the case may be, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 103% the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that if such noncompliance cannot be cured within such period of sixty (60) days or ten (10) days, as the case may be, with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholders of any such extension.

The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee and the Trustee, which notice shall be no less than sixty (60) days prior to a meeting called to consider matters set forth in clauses (a)(i) and (a)(ii) of this Section and no less than ten (10) days prior to a meeting called to consider matters set forth in clause (a)(iv) of this Section. The holders of one hundred percent (100%) of the Bonds Outstanding shall have the right but not the obligation, at any time subsequent to the receipt of such notice but prior to the Interest Payment Date referred to above, to tender to the Trustee all of the Bonds then Outstanding for cancellation in accordance with the Indenture. Upon the circumstances set forth in Sections 2.03 (c), (d), (e) and (f) of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

Section 6.13. Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and

expense of the Lessee, as the Agency or the Trustee deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder or under the Indenture.

Section 6.14. Recording and Filing. The Agency shall cause this Agreement, as originally executed or a memorandum thereof, to be recorded (at the sole cost and expense of the Lessee) subsequent to the recordation of the Indenture and the Company Lease, 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. In addition, the security interest granted by (i) the Agency to the Trustee pursuant to the Indenture shall be perfected by the filing of financing statements at the direction of the Agency (at the sole cost and expense of the Lessee) which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the Register of The City of New York. The Trustee shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interests created by the Indenture, so that the rights of the Agency and the Trustee in the Trust Estate may be fully preserved as against creditors or purchasers for value from the Agency or the Lessee. The Lessee agrees to furnish the Agency and the Trustee with the Opinion of Counsel addressed to the Agency and the Trustee referred to in Section 6.07 of the Indenture and shall perform all other acts (including the payment of all costs) necessary in order to enable the Agency and the Trustee to comply with this Section 6.14 and Section 6.07 of the Indenture.

The Agency and the Institution acknowledge that, as of the date of issuance of the Series 2006 Bonds,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a "public-financed transaction" is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of five (5) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Agency shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements. The Institution acknowledges and agrees that the Agency shall have no responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or

the failure to effect any act referred to in this Section or a failure of sufficiency of any such act so effected.

Section 6.15. Non-Discrimination; Employment Information, Opportunities and Guidelines. (a) (i) The Lessee shall ensure that all employees and applicants for employment at the Facility are afforded equal employment opportunity without discrimination.

(ii) At all times during the construction, maintenance and operation of the Facility, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use reasonable efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

(iv) The Lessee shall furnish to the Agency all information reasonably 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.

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

(b) Except as is otherwise provided by collective bargaining contracts or agreements to which the Lessee is a party, the Lessee shall cause new employment opportunities created as a result of the Project to be listed with the New York State Department of Labor, Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. 97-300) in which the Project is located. Except as is otherwise provided by collective bargaining contracts or agreements to which the Lessee is a party, the Lessee covenants and agrees, where practicable, to first consider persons eligible to participate in programs under the Federal Job Training Partnership Act (P.L. No. 97-300) who shall be referred to administrative entities or service delivery areas created pursuant to such Federal Job Training Partnership Act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee 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 to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to Lessee and Lessee's employees (i) to determine compliance of the Project with this Section and to enable the provisions of this Section to be achieved or (ii) upon the Agency's request, to enable the Agency and/or EDC to comply with its reporting requirements pursuant to New York City Local Laws 48 of 2005, and any other applicable laws, rules or regulations (collectively, the "Required Employment Information"). Such information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee itself, or any information previously

released as provided by all or any of the foregoing parties (collectively, "Released 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 Release pursuant to New York City Local Law 48 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(d) Annually, by August 1 of each year, commencing on August 1, 2007, until the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A-1 hereto, certified as to accuracy by a member of the Lessee. In addition, upon a redemption of the Series 2006 Bonds, the Lessee shall submit to the Agency an employment report, substantially in the form of Schedule A-1 hereto, certified as to accuracy by a member of the Lessee.

Section 6.16. Right to Cure Agency Defaults. The Agency hereby grants the Lessee full authority for account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Lessee, in the name and stead of the Agency, with full power of substitution.

Section 6.17. Tax Covenants.

(a) The Lessee covenants to comply with each requirement of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for Federal income tax purposes pursuant to Section 103 of the Code. In furtherance of the covenant contained in the preceding sentence, the Lessee agrees to comply with the provisions of the Tax Certificate as a source of guidance for complying with the Code.

(b) The Lessee covenants that it will not take any action or fail to take any action with respect to the Bonds which would cause such Bonds to be "arbitrage bonds", within the meaning of such term as used in Section 148 of the Code and the regulations promulgated thereunder, as amended from time to time.

(c) The Lessee agrees that it shall promptly pay to the Trustee, as additional sums under this Lease Agreement, the amount of any Rebate Requirement, as defined in the Tax Certificate, the Agency is obligated to pay to the United States Department of the Treasury.

(d) The obligation of the Lessee to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Agency, the Credit Bank, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Lessee of its obligation under this Section.

(e) Notwithstanding any other provision of the Indenture or this Lease Agreement to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income for Federal income tax purposes, the covenants contained in this Section shall survive the discharge and satisfaction of the Bonds (in accordance with Section 10.01 of the Indenture) and the term of this Lease Agreement.

(f) The Lessee will not use any of the funds provided by the Agency hereunder, or any other funds, nor will it permit any of the funds provided by Agency hereunder, or any other funds, to be used in a manner which would impair the exclusion of the interest on the Bonds from gross income for Federal income tax purposes. In furtherance of this covenant the Lessee agrees to comply with the terms of the Tax Certificate executed by the Lessee in connection with the issuance of the Bonds.

(g) The Lessee agrees that none of the proceeds of the Bonds shall at any time be used directly or indirectly for any purpose which would cause any component of the Project to be financed with proceeds of the Bonds to become a facility that is not a "manufacturing facility" (as such term is defined in Section 144(a)(12)(C) of the Code).

(h) Neither the Lessee nor any related party within the meaning of Treasury Regulation Section 1.150-1(b) shall purchase Bonds in an amount related to the amount of the proceeds of the Bonds provided to the Lessee by the Agency under this Agreement.

(i) The representations, warranties, covenants and statements of expectation of the Lessee set forth in the Tax Certificate (including the exhibits and other attachments thereto) are hereby incorporated in this Agreement as though fully set forth herein.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

(a) Failure of the Lessee to pay within one day of the date due any rent that has become due and payable by the terms hereof;

(b) Failure of the Lessee to pay any amount (except the obligation to pay rent under Section 3.3 hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.4 or 4.5 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency or the Trustee;

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

(d) The Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or

adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

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

(f) Any representation or warranty made (i) by the Lessee in the application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Bonds of any Series for approval of the Project or its financing, or (ii) by the Lessee herein under any of the other Security Documents or (iii) in the Letter of Representation and Indemnity Agreement delivered to the Agency and the original purchaser(s) of the Bonds of any Series, or (iv) 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 Security Document shall occur and be continuing;

(h) If a default beyond any applicable notice and/or grace period occurs or under any mortgage or security agreement now or hereafter encumbering or affecting all or any part of the Facility; or

(i) If a default beyond any applicable notice and/or grace period occurs under any fee mortgage in respect of the Facility, or if the Lessee, the Agency and/or the Trustee shall be made a party in any action or proceeding in connection with any such fee mortgage, including, without limitation, a foreclosure or similar proceeding.

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, or the Trustee where so provided, may take any one or more of the following remedial steps:

(a) The Trustee, as and to the extent provided in Article VII of the Indenture, may cause all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under Section 7.1(d) or (e) hereof, all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Agency, the Trustee, the Owners of the Bonds or any other Person being a condition to such acceleration;

(b) Reserved;

(c) The Agency, with the prior written consent of the Trustee, or the Trustee, may terminate this Agreement, and exclude the Lessee from possession of the Facility, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate unless prior to such time all accrued unpaid rentals (exclusive of any such rentals accrued solely by virtue of the acceleration of the due date of the Bonds as provided in Section 7.01 of the Indenture), shall have been paid and all such defaults shall have been fully cured except in the event that the curing of any such default in the case of the Event of Default specified in Section 7.1(c) hereof takes more than thirty (30) days and the Lessee is proceeding diligently to cure the default. No such termination of this Agreement shall relieve the Lessee of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

(d) The Agency or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement;

(e) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(f) The Agency, without the consent of the Trustee or any Bondowner or any other Person but with notice to the Trustee and the Bondowner, may proceed to enforce the Agency's Reserved Rights by (i) bringing an action for damages, injunction or specific performance, and/or (ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payments of amounts due by the Lessee under the Agency's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Lessee under the Agency's Reserved Rights, and/or (iii) terminating the Company Lease and this Agreement and all of the Agency's right, title and interest in the Facility. The Lessee hereby appoints the Agency as its agent and attorney-in-fact to execute, deliver and record on behalf of Lessee any documents and instruments which may be necessary to effectuate such termination of the Company Lease and this Agreement as described in clause "(iii)" immediately preceding; and such documents and instruments shall include, but not be limited to, real property transfer tax forms and affidavits, and all forms and affidavits necessary for and in connection with New York State Gains Tax clearance, if applicable. The Lessee agrees that the agency and power of attorney which it has granted in the sentence preceding shall be deemed irrevocable for the purposes described and that same shall be coupled with an interest.

In the event that the Lessee fails to make any rental payment required in Section 3.3 hereof, the installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, all of which shall survive any such action.

Section 7.3. Reserved.

Section 7.4. Remedies Cumulative. The rights and remedies of the Agency or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee allowed by law with respect to any default under this Agreement. Failure by the

Agency or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right of the Agency or the Trustee: (a) to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, (b) to exercise any such rights or remedies, if such default by the Lessee be continued or repeated, or (c) to recover possession of the Facility by reason thereof. Nothing in this Section 7.4 shall be deemed to restrict the right of the Lessee to reinstate this lease as provided in Section 7.2.

Section 7.5. 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/or the Trustee and the Lessee or any delay or omission on the part of the Agency and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Lessee hereby waives the benefit and advantage of, and covenants not to assert against the Agency or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 7.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then, and in every such case, the Agency, the Trustee and the Owners of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 7.7. Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee should default under any of the provisions of this Agreement and the Agency or the Trustee or the Bondowner should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency or the Trustee or the Bondowner the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII

OPTIONS

Section 8.1. Options. (a) The Lessee has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the defeasance, redemption or purchase of the Bonds in whole or in part in accordance with the terms of the Indenture. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Outstanding Bonds of a Series requested to be redeemed with such advance rental payment, (iii) if the Bonds of a Series are

to be redeemed in part, the maturities and principal amounts thereof to be redeemed and (iv) the date on which such principal amount of Bonds are to be redeemed. Such date of redemption shall be on any date during the term of this Agreement if the Bonds are to be redeemed in whole or on any Interest Payment Date of the Bonds if the Bonds are to be redeemed in part and shall in either case be a date not less than forty (40) days nor more than ninety (90) days from the date such written notice shall have been delivered to the Trustee. If applicable, the Lessee may exercise its option to effect the redemption of the Bonds in whole under the circumstances set forth in Section 5.1(f) of this Agreement. Any such advance rental payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Redemption Account of the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Trustee and the Paying Agents in connection with such redemption. The Lessee shall further pay on or before any date of redemption of the Bonds in whole, in legal tender, to the Agency, the Trustee and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement or the Indenture and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture.

(b) The Lessee shall have the option to terminate this Agreement on any date during the term of this Agreement by causing the redemption, purchase or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth of the Indenture.

(c) As a condition precedent to the termination of this Agreement, pursuant to Section 8.1(b) hereof, the Lessee shall pay to the Trustee, in consideration thereof, in legal tender, advance rental payments, for deposit in the Bond Fund (if payment in full of the principal or the Redemption Price of, and interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(1) an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to redeem, purchase or defease the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds;

(2) expenses of redemption, the fees and expenses of the Agency and the Trustee and all other amounts due and payable under this Agreement or the Indenture on or before such date; and

(3) one dollar.

(d) Upon such payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption) in accordance with Section 8.1(c) hereof, the Lessee may terminate this Agreement by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option to terminate this Agreement which notice shall set forth a requested closing date for the termination of this Agreement which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date the fees and expenses of the Agency and the Trustee and all other amounts due and payable under this Agreement or the Indenture. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

(e) The Lessee shall not, at any time, assign or transfer its option to terminate this Agreement as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to Section 9.3 hereof without the prior written consent of the Agency and the Trustee.

Section 8.2. Termination on Exercise of Option to Terminate. Upon termination of this Agreement in accordance with Section 8.1 hereof, the Agency will, upon payment of the consideration payable in accordance with Section 8.1(c) hereof deliver or cause to be delivered to the Lessee a termination of this Agreement in recordable form. Concurrently with the delivery of such termination, there shall be delivered by the Agency to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Bonds.

Section 8.3. Option to Purchase or Invite Tenders of Bonds. The Lessee shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by a tender offer to the Owners thereof. The Bonds so purchased by the Lessee shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase. The Agency shall at all times make available or cause to be made available to the Lessee its registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondowners if known.

Section 8.4. Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and Paying Agents and all other amounts due and payable under this Agreement or the Indenture and the other Security Documents, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 4.3 if applicable, 6.2, 8.5, 9.15 and 9.16.

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

(a) 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 Lessee 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.

(b) 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 Lessee delivered to the Agency pursuant to Section 2.2 hereof)(such earlier date to be referred to as the "**Operations Commencement Date**"), the Lessee 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:

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

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

3. 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 Lessee, 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 Lessee on the Commencement Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax savings shall be deemed to have accrued to the Lessee on each date upon which such sales and/or use tax saving shall have been exempted by reason of the use by the Lessee of the Sales Tax Letter, provided, however, that if the Lessee 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 Lessee to the State Department of Taxation and Finance on Form ST-340, or, if the Lessee shall have failed to file Form ST-340, the Commencement Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The Lessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event (as defined herein) if (i) the Lessee has relocated its operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City; and (ii) the Lessee 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 Lessee at the Facility Realty prior to relocation; and (iii) the Lessee 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 Lessee 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.

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

1. 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 Lessee 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 Lessee or any Affiliate thereof, or

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

(d) The Lessee 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.

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

ARTICLE IX

MISCELLANEOUS

Section 9.1. Indenture; Amendment. The Lessee shall have and may exercise all the rights, powers and authority stated to be in the Lessee in the Indenture and in the Bonds, and the Indenture and the Bonds shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority so stated to be in the Lessee or otherwise adversely affects the Lessee without the written consent of the Lessee.

Section 9.2. Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other 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.

Section 9.3. Assignment or Sublease.

(a) The Lessee may not at any time (i) subject to 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 and the Trustee (which consent of the Agency will take into consideration the Agency's subletting policies as in effect from time to time) and provided that, (1) any sublessee of the Lessee is a Tax-Exempt Organization or, if such sublessee is not a Tax-Exempt Organization, the Lessee shall deliver to the Agency an opinion of nationally recognized bond counsel acceptable to the Agency to the effect that the sublease with such sublessee will not adversely affect the exclusion of the interest on any Tax-Exempt Bonds from gross income for Federal income tax purposes and an Opinion of Counsel to the effect that such transfer or sublease shall not cause the Facility to cease being a "project" under the Act; (2) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party; (3) any sublessee of the Lessee of the Facility in whole shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State; (4) any sublessee shall utilize the Facility as a qualified "project" within the meaning of the Act; (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document; (6) 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 such space would be subleased by the Lessee; (7) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease; and (8) each such sublease contains such other provisions as the Agency or the Trustee may reasonably require. The Lessee shall furnish or cause to be furnished to the Agency and the Trustee a copy of any such sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

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

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

(d) The Lessee covenants and agrees not to amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, any sublease without the prior written consent of the Agency.

(e) The Lessee shall file with the Agency by January 1 of each year commencing January 1, 2007, a certificate of an Authorized Representative of the Lessee with respect to all tenancies in effect at the Facility Realty, in the form of the Subtenant Survey attached hereof as Appendix B.

(f) Nothing in this Section 9.3 shall be deemed to amend or modify the provisions regarding subletting set forth in the Prime Lease. The requirements set forth in this Section 9.3 shall be in addition to any other requirements set forth in the Prime Lease.

Section 9.4. Priority. Pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other moneys receivable under this Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of and interest on the Bonds, and this Agreement shall be subject and subordinate to the Indenture and such lien, security interest, pledge and assignment thereunder. 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 Lessee under the Prime Lease.

Section 9.5. Benefit of and Enforcement by Bondowners. The Agency and the Lessee agree that this Agreement is executed in part to induce the purchase of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Lessee as set forth in this Agreement are hereby declared to be for the benefit of the Owner from time to time of the Bonds and may be enforced as provided in Article VII of the Indenture on behalf of the Bondowner by the Trustee.

Section 9.6. Amendments. This Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only if the Lessee shall assume in writing the obligations of such amended Agreement.

Section 9.7. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service or (iii) by hand delivery, and addressed to the intended recipient thereof as follows:

if to the Agency, to: New York City Industrial Development Agency, 110 William Street, New York, New York 10038, Attention: Chairperson, with a copy to the Executive Director of the Agency at the same address; and

if to the Lessee, to: Gourmet Boutique, L.L.C., 144-02 158th Street Jamaica, New York 11434, Attention: President; and

if to the Trustee, to U.S. Bank National Association, 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Department.

The Agency, the Lessee and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided, herein, be deemed to have been delivered or given (A) 3 business days following posting if transmitted by mail, (B) one day following sending if transmitted by a nationally recognized overnight delivery service, or (C) upon delivery if given by hand delivery, with rejection of delivery to constitute delivery.

Section 9.8. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility.

Section 9.9. 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 9.10. Inspection of Facility. The Lessee will permit the Trustee or its duly authorized agents, at all reasonable times and upon reasonable notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights hereunder and under the Indenture with respect to the Facility. The Lessee will further permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice to enter the Facility but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.11. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. 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 9.12. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Lessee and their respective successors and assigns and, to the extent expressly provided herein, shall inure to the benefit of the Trustee and the Owners of the Bonds.

Section 9.13. Net Lease. It is the intention of the parties hereto that this Agreement be a "net lease" and that all of the rent be available for debt service on the Bonds, and this Agreement shall be construed to effect such intent.

Section 9.14. Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WITHOUT GIVING EFFECT TO THE PRINCIPLES OF THE CONFLICTS OF LAWS THEREOF.

Section 9.15. Investment of Funds. Any moneys held as part of the Rebate Fund, Bond Fund, the Project Fund, the Debt Service Reserve Fund, if any, or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Lessee, be invested and reinvested by the Trustee as provided in the Indenture. Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 9.16. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

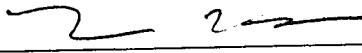
The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 9.17. Recourse Under This Agreement or on Bonds. All covenants, stipulations, promises, agreements and obligations of the Agency or the Lessee, as applicable, contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and the Lessee, as the case may be, and not of any member, director, officer, employee or agent of the Agency or the Lessee, in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or the Lessee or any natural person executing the Bonds.

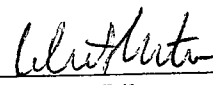
Section 9.18. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on December 6th, 2006.

IN WITNESS WHEREOF, the Agency and the Lessee each has caused its corporate name to be hereunto subscribed by a duly Authorized Representative, all being done as of the year and day first above written.

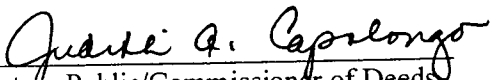
**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Maureen Babis
Deputy Executive Director

GOURMET BOUTIQUE, L.L.C.

By: 
Roberto Liberto
Vice President and
Chief Financial Officer

On the 4th 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


JUDITH A. CAPOLONGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October ~~2~~ 1, 2007

STATE OF NEW YORK)

) s.s.:

COUNTY OF NEW YORK)

On the 5th day of December, in the year 2006, before me, the undersigned, personally appeared Roberto Liberto, 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.



Notary Public

JERRY S. LEIBNER
Notary Public, State of New York
No. 02LE4795699
Qualified in Nassau County
Commission Expires Aug. 31, 2009

DESCRIPTION OF THE PROJECT

The Project consists of the financing of (i) the improvement and equipping of an approximately 50,000 square foot manufacturing and distribution facility located on an approximately 54,000 square foot parcel of land located at 144-01 157th Street, in Jamaica, New York 11434 (the "Facility"), which Facility is leased by the Lessee and will be in its business of manufacturing and distributing prepared and processed foods, and (ii) certain costs of issuance relating to the issuance of the Series 2006 Bonds.

EXHIBIT B

DESCRIPTION OF THE LAND

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

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
15012	6	144-01 157th Street Jamaica, New York

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

Schedule A Description

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

BEGINNING at the corner formed by the intersection of the southerly side of Rockaway Boulevard (100 feet wide) with the easterly side of 157th Street (60 feet wide);

RUNNING THENCE easterly along the southerly side of Rockaway Boulevard, 217.24 feet to the corner formed by the intersection of the southerly side of Rockaway Boulevard with the westerly side of 158th Street;

THENCE southerly along the westerly side of 158th Street, 250.33 feet to a point;

THENCE westerly at right angles to the westerly side of 158th Street, 97.50 feet to a point;

THENCE southerly at right angles to the last mentioned course, 26 feet to a point;

THENCE westerly at right angles to the last mentioned course, 97.50 feet to the easterly side of 157th Street;

THENCE northerly along the easterly side of 157th Street, 372.08 feet to the corner formed by the intersection of the southerly side of Rockaway Boulevard and the easterly side of 157th Street, the point or place of BEGINNING.

SCHEDULE OF PAYMENTS
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
INDUSTRIAL DEVELOPMENT REVENUE
(GOURMET BOUTIQUE, L.L.C. PROJECT),
SERIES 2006A

<u>Sinking Fund Installment</u> <u>Payment Date</u>	<u>Sinking Fund</u> <u>Installment</u>
November 1, 2007	\$300,000
November 1, 2008	300,000
November 1, 2009	300,000
November 1, 2010	300,000
November 1, 2011	300,000
November 1, 2012	300,000
November 1, 2013	300,000
November 1, 2014	300,000
November 1, 2015	300,000
November 1, 2016	300,000
November 1, 2017	300,000
November 1, 2018	300,000
November 1, 2019	300,000
November 1, 2020	300,000
May 1, 2021	270,000*

* Final maturity

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY
INDUSTRIAL DEVELOPMENT REVENUE
(GOURMET BOUTIQUE, L.L.C. PROJECT),
SERIES 2006B

<u>Sinking Fund Installment</u> <u>Payment Date</u>	<u>Sinking Fund</u> <u>Installment</u>
November 1, 2007	\$220,000
November 1, 2008	220,000
November 1, 2009	220,000
November 1, 2010	220,000
November 1, 2011	220,000
November 1, 2012	220,000
November 1, 2013	210,000*

* Final maturity

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 _____

4 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 Y N (please circle Y or N)
' at a cost exceeding 10% of the current assessed value of the existing
improvements at such Project Location?

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 is eligible for overtime compensation.

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

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

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

BENEFITS REPORT

For benefits utilized during the period of __/__/99 - __/__/00

SALES TAX BENEFIT

not applicable, no benefit used this period not applicable, maximum benefit reached

not applicable, project not eligible for benefit

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

BUSINESS INCENTIVE RATE - (BIR)

not applicable, no benefit used this period not applicable, maximum benefit reached

not applicable, project not eligible for benefit

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

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

Signature: _____ Date: _____

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

PLEASE FAX YOUR RESPONSE TO 212-312-3918

20-- subtenant survey

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

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

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

Subtenant	Floor	Square Footage Leased	Lease Begins	Lease Ends
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I, the undersigned, hereby certify to the best of my knowledge and belief that the information reported above is true, correct and complete. I understand that this information is submitted pursuant to the requirements of the IDA Transaction Documents.

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number: _____

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

HelpLine: 212-312-3968

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

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.

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

When is the report due?

Section 9.17 You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Need help?

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

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

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

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

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

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2100

(8:30 a.m. to 4:25 p.m., eastern time)



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



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

exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

Signature area

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

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

Privacy notification

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

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

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

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

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of **GOURMET BOUTIQUE, L.L.C.**, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of December 1, 2006 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

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

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

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

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

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

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

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

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

GOURMET BOUTIQUE, L.L.C.

By: _____

Name:

Title:



LOCATION & CONTACT INFORMATION

Due Date By Facsimile: July 31, 20____

Gourmet Boutique, L.L.C.
165-35 145th Drive
Jamaica, New York 11434

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.)
<hr/>			
<hr/>			
<hr/>			

*** 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

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