

Lease Agreement

LEASE AGREEMENT

Dated as of June 1, 2007

by and between

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

and

221 MCKIBBIN OWNER LLC

Affecting the Land more particularly described in
Exhibit A to this Lease Agreement
on the Official Tax Map of Kings County

Record and Return to:
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes, III, Esq.
File No. 90570.118

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND REPRESENTATIONS	4
Section 1.1. Definitions	4
Section 1.2. Construction	9
Section 1.3. Representations and Warranties by Agency	9
Section 1.4. Findings by Agency.....	9
Section 1.5. Representations and Warranties by the Lessee.....	10
ARTICLE II LEASEHOLD TRANSFER TO THE AGENCY; THE PROJECT; AND LEASEHOLD TITLE INSURANCE	12
Section 2.1. Leasehold Interest.....	12
Section 2.2. The Project.....	13
Section 2.3. Leasehold Title Insurance.....	14
ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS	14
Section 3.1. Lease of the Facility	15
Section 3.2. Duration of Term.....	15
Section 3.3. Rental Provisions. (a) Base Rent	15
Section 3.4. Rental Payments Payable Absolutely Net	15
Section 3.5. Nature of Lessee’s Obligation Unconditional	16
Section 3.6. Assignment of Sublease Agreement.....	16
ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE	16
Section 4.1. Maintenance, Alterations and Improvements.....	16
Section 4.2. Removal of Property of the Facility	17
Section 4.3. Payment in Lieu of Real Estate Taxes.....	18
Section 4.4. Taxes, Assessments and Charges	23
Section 4.5. Insurance	24
Section 4.6. Advances by Agency	26
Section 4.7. Compliance with Law.....	26
ARTICLE V DAMAGE, DESTRUCTION AND CONDEMNATION.....	27
Section 5.1. Damage, Destruction and Condemnation.....	27
ARTICLE VI PARTICULAR COVENANTS.....	29
Section 6.1. Dissolution of Lessee; Restrictions on Lessee	29
Section 6.2. Indemnity.....	30
Section 6.3. Compensation and Expenses of the Agency.....	32

Section 6.4. Retention of Leasehold Title to Facility; Grant of Easements; Release of Facility Realty	32
Section 6.5. Discharge of Liens.....	33
Section 6.6. Agency’s Authority; Covenant of Quiet Enjoyment	34
Section 6.7. No Warranty of Condition or Suitability	34
Section 6.8. Financial Statements; No-Default Certificates	34
Section 6.9. Employment Information, Opportunities and Guidelines	35
Section 6.10. Further Assurances	36
Section 6.11. Recording and Filing	36
Section 6.12. Further Encumbrances.....	36
Section 6.13. Subtenant Survey.....	36
Section 6.14. Contact Information Form.....	36
Section 6.15. Anti-Raiding Prohibition.....	36
Section 6.16. Architect’s Certificate and Construction Manager’s Certificate	36
Section 6.17. Signage at Facility Section	36
Section 6.18. Certain Continuing Representations.....	36
ARTICLE VII EVENTS OF DEFAULT; REMEDIES	37
Section 7.1. Events of Default.....	37
Section 7.2. Remedies on Default	39
Section 7.3. Remedies Cumulative.....	39
Section 7.4. No Additional Waiver Implied by One Waiver.....	39
Section 7.5. Effect on Discontinuance of Proceedings.....	39
Section 7.6. Agreement to Pay Attorneys’ Fees and Expenses	40
ARTICLE VIII OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS	40
Section 8.1. Option to Purchase Agency’s Leasehold Interest in Facility and to Terminate Agreement	40
Section 8.2. Conveyance on Exercise of Option to Purchase.....	40
Section 8.3. Reserved.....	41
Section 8.4. Termination of Agreement	41
Section 8.5. Recapture of Agency Benefits.....	41
ARTICLE IX MISCELLANEOUS.....	43
Section 9.1. Force Majeure.....	43
Section 9.2. Priority.....	44
Section 9.3. Assignment or Sublease	44
Section 9.4. Amendments.....	45

Section 9.5. Notices 45

Section 9.6. Prior Agreements Superseded 46

Section 9.7. Severability 46

Section 9.8. Inspection of Facility 46

Section 9.9. Effective Date; Counterparts 46

Section 9.10. Binding Effect 46

Section 9.11. Third Party Beneficiaries 46

Section 9.12. Law Governing 46

Section 9.13. WAIVER OF TRIAL BY JURY 46

Section 9.14. Non-Discrimination 47

Section 9.15. Recourse Under This Agreement 47

Section 9.16. Date of Agreement for Reference Purposes Only 47

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of June 1, 2007 (this "Agreement"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), party of the first part, having its principal office at 110 William Street, New York, New York 10038, and **221 MCKIBBIN OWNER LLC**, a limited liability company duly organized and existing under the laws of the State of New York (the "Lessee"), party of the second part, having its principal office at 1155-1205 Manhattan Avenue, Brooklyn, New York 11222.

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and Greenpoint Manufacturing and Design Center Local Development Corporation, a not for profit local development corporation duly organized and existing under the laws of the State of New York (the "**Sublessee**"), to induce the Lessee and Sublessee to commence the acquisition, improvement and equipping of a commercial facility constituting "a project" within the meaning of the Act within the territorial boundaries of The City of New York, consisting of the acquisition of an approximately 52,500 square foot parcel of real property located at 221-251 McKibbin Street, Brooklyn, New York and as more particularly described in Exhibit A attached hereto (the "**Land**") and otherwise described in Exhibit A attached hereto; and

WHEREAS, the Project will consist of the acquisition of the Land by the Lessee and the acquisition, improvement and equipping of an approximately 72,000 square foot building thereon, to be used by the Lessee and the Sublessee in their business of providing manufacturing, warehousing and distribution space for certain commercial tenants (collectively, the "**Project**") (the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on

any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the “**Facility**”); and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a “straight-lease transaction” within the meaning of the Act in which the Agency will acquire a leasehold estate to the Facility and the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on March 13, 2007, the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Facility by the Agency and the lease of the Facility by the Agency to the Lessee for Sublease to the Sublessee; and

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

WHEREAS, Sovereign Bank (the “**Mortgagee**”) has agreed to make a loan to the Lessee, and in order to secure the Lessee’s obligations with respect to such loan, the Lessee has agreed to grant a Mortgage, dated as of the Commencement Date, from the Lessee to the Mortgagee in the principal amount of \$7,004,000 (as such mortgage may be increased, amended, restated or replaced from time to time in accordance with the terms thereof and this Agreement, the “**Mortgage**”) for the purpose of financing a portion of the costs of the Project; and

WHEREAS, in order to evidence the Lessee’s obligation to repay the loan made by Mortgagee to it pursuant to a certain Mortgage, the Lessee, simultaneously with the execution and delivery thereof, will issue to Mortgagee a promissory note (the “**Mortgage Note**”) in the aggregate principal amount of the Mortgage; and

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

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

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

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

An **Affiliate** of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

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

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

Approved Facility shall mean a commercial facility for use by the Lessee and the Sublessee in their business of providing manufacturing, warehousing and distribution space for certain commercial tenants.

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

Authorizing Resolution shall mean the resolution adopted by the Agency on March 13, 2007, authorizing among other things, the undertaking of the Project, the acquisition of a leasehold estate in the Facility by the Agency and the lease of the Facility by the Agency to the Lessee for sublease to the Sublessee.

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

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

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

Commencement Date shall mean June 14, 2007 on which date this Agreement was executed and delivered.

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

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

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

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

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

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

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

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

Facility Tenant shall have the meaning specified in Section 9.3(b) hereof.

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

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

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

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Guarantors shall mean the Lessee and the Sublessee.

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

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

Independent Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency (such approval not to be unreasonably withheld).

Land shall mean those certain lots, pieces or parcels of land described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Lessee shall mean 221 McKibbin Owner LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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

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

Mortgage shall have the meaning specified in the recitals to this Agreement and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

Mortgagee shall mean Sovereign Bank and any other lender acceptable to the Lessee.

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

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

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

Permitted Encumbrances shall mean:

(i) the Company Lease, this Agreement, the Sublease Agreement and the Mortgage and any permitted financing of the Mortgage on a permanent basis, either with the Mortgagee or another lending institution;

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

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

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

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;

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

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

(viii) Leases of the Facility Tenants.

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust estate, unincorporated

organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or any agency or political subdivision thereof or other entity.

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

Principal(s) shall mean an individual or, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such entity, or person or persons holding equivalent positions.

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

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

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

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

Project Documents shall mean the Company Lease, this Agreement, the Guaranty Agreement, the Mortgage Note and the Mortgage.

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

Required Disclosure Statement shall mean that certain Required Disclosure Statement in the form of Schedule G attached hereto and made a part hereof. Each certification, representation and warranty set forth in a Required Disclosure Statement delivered to the Agency shall be deemed incorporated by reference into this Agreement as if fully set forth herein.

State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease Agreement, dated as of June 1, 2007, by and between the Lessee, as sublessor, and the Sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms hereof.

Sublessee shall mean Greenpoint Manufacturing and Design Center Local Development Corporation, a not-for-profit local development corporation duly organized and existing under the laws of the State of New York, and their respective permitted successors and assigns under the Sublease Agreement.

Tenant Lease shall mean any lease or sublease by the Lessee (or by any other Person whose leasehold estate in the Facility or any portion thereof is derivative of the Lessee) of real or personal property constituting all or any part of the Facility, any tenancy with respect to the Facility or any part thereof, whether or not in writing, any license or concession agreement and any other agreement, by whatever name called, involving a transfer or creation of possessory rights or similar rights of use or occupancy in the Facility or any part thereof without transfer of title, and any and all guarantees of any of the foregoing, whether now existing or hereafter made.

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

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

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

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

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

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

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

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

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

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

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

Section 1.5. Representations and Warranties by the 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 power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party. The Lessee is duly qualified to do business in every jurisdiction in which such qualification is necessary.

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

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

connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

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

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

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

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

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

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

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

(k) The Mortgage Note shall evidence the obligation of the Lessee to repay the loan made by the Mortgagee to the Lessee pursuant to the Mortgage for purposes of financing a portion of the costs of the Project.

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

(m) The amounts to be provided to the Lessee pursuant to the Mortgage, together with other moneys available to the Lessee, are sufficient to pay all costs in connection with the completion of the Project.

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

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

(q) The aggregate rentable square footage of the Improvements constituting part of the Facility is approximately 72,000 square feet and the aggregate square footage of the Land is approximately 52,500 square feet.

(r) 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.

(s) Except as set forth in Schedule H attached hereto, none of the Lessee, the Principals of the Lessee, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Lessee:

(i) 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;

(ii) has been convicted of a misdemeanor related to the truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

(iv) is currently under indictment for a felony criminal offense, or has received formal written notice from a federal, state or local governmental agency or body that is currently under investigation for a felony criminal offense; or

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

ARTICLE II

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

Section 2.1. Leasehold Interest. The Agency has acquired, for good and valuable consideration therefor, pursuant to the Company Lease, a valid leasehold interest in the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free

and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) a valid leasehold interest in all Improvements intended to be incorporated or installed in the Facility as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest such leasehold estate in the Improvements in the Agency and to protect such title against claims of any third parties.

Section 2.2. The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring the Land and acquiring the Improvements thereon or therein, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in undertaking the Project from funds made available therefor in accordance with or as contemplated by this Agreement and the Mortgage, 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 covenants and agrees that it will complete the Project, or cause the Project to be completed, by October 1, 2008, and that such completion will be effected in a first class workmanlike manner, using appropriate materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement, provided, however, the Lessee may revise the scope of the Project, subject to the prior written consent of the Agency. The cost of the Project shall be financed from (i) proceeds of the Mortgage, (ii) funds of the Lessee or an officer or principal thereof in the aggregate amount of \$4,000,000, and (iii) other funds of the Lessee to the extent such funds shall be necessary to cover costs of the Project which exceed such other sources of funds. In the event that moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement.

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

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

Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

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 C hereto. Such certificate of the Authorized Representative of the Lessee shall be accompanied by (i) a temporary or permanent certificate of occupancy for the Facility, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of the Project have been paid in full, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project; (iii) the Final Project Cost Budget together with evidence reasonably satisfactory to the Agency that at least ten percent (10%) of the aggregate costs of the Project were paid from equity funds of the Lessee or the Sublessee or a respective officer thereof; (iv) evidence satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 hereof, in respect of the Facility have been paid in full. Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

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

(d) Before undertaking any renovation or construction work that would involve a disturbance of soils on the property, the Lessee shall take reasonable steps (which may include a subsurface investigation) to document the presence or absence of soil contamination and provision shall be made in connection with any such renovation or construction for the proper management of any materials that warrant special handling.

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

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

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

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

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on June 30, 2033, or such earlier date as this Agreement may be terminated as hereinafter provided (such earlier date hereinafter referred to as the “Expiration Date”).

The Lessee hereby covenants, simultaneously with its execution and delivery of this Agreement, to enter into, execute and deliver the Sublease Agreement with the Sublessee. Under the terms of the Sublease Agreement, the Sublessee has covenanted, among other things, to keep and perform all of the terms of this Agreement, and the Sublessee has agreed to pay or cause to be paid sublease rentals to the Lessee in an amount and at times which will at least equal the lease rentals to be paid by the Lessee hereunder.

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

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

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

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

indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

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

Section 3.6. Assignment of Sublease Agreement. In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency, subject to any assignment, collateral or otherwise, from the Lessee to the Mortgagee, all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals (needed to make payments under the Lease Agreement and the Mortgage), revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder.

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted; will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement; and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Sublessee at the Facility shall not be impaired or diminished in any way. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all applicable governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any

inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

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

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

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

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

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

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

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

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

Section 4.2. Removal of Property of the Facility. (a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (in either case, the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided, however, no such removal shall be effected if (v) such removal is to another location other than the Facility Realty, (w) such removal would change the nature of the Facility as an Approved Facility or a "project" within the meaning of the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (y) such removal would materially reduce the fair market value of the

Facility below its value immediately before such removal. The evaluations made under (v), (w), (x) or (y) of this Section 4.2(a) may be made after taking into account property installed or placed upon the Facility in substitution or replacement of such removed property.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency title to any property installed or placed upon the Facility pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to this Agreement and the Sublease Agreement, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to this Agreement and the Sublease Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

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

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

Section 4.3. Payment in Lieu of Real Estate Taxes.

(a) Description and Address of Project:

The Project consists of the acquisition of the Land and the acquisition, improvement and equipping of an approximately 72,000 square foot building thereon, to be used by the Lessee and the Sublessee in their business of providing manufacturing, warehousing and distribution space for certain commercial tenants. The Facility Realty is described in Exhibit A hereto.

(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, 2033, 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, in accordance with Section 4.3(g) hereof, make no payments in lieu of real estate taxes with respect to the Land (subject to Section 4.3(i) hereof) except as follows: for July 1, 2028 to June 30, 2029, a payment equal to 20% of Full Land Taxes (as defined below) for that year; for July 1, 2029 to June 30, 2030, a payment equal to 40% of Full Land Taxes for that year; for July 1, 2030 to June 30, 2031 a payment equal to 60% of Full Land Taxes for that year; and for July 1, 2031, to June 30, 2032, a payment equal to 80% of Full Land Taxes for that year.

"PILOT Commencement Date" shall mean July 1, 2008.

"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 Lessee shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.

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

For the period commencing on the PILOT Commencement Date and 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, 2029, an amount, as determined for each City Tax Fiscal Year, equal to the lesser of Adjusted CRET and STRET; and
- (2) from July 1, 2029, through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2029 - June 30, 2030	STRET + [(CRET less STRET) x 0.2]
July 1, 2030 - June 30, 2031	STRET + [(CRET less STRET) x 0.4]
July 1, 2031 - June 30, 2032	STRET + [(CRET less STRET) x 0.6]
July 1, 2032 - June 30, 2033	STRET + [(CRET less STRET) x 0.8]

Provided, however, with respect to this Subdivision "2": if for any City Tax Fiscal Year Adjusted CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such year shall equal Adjusted CRET.

Certain terms used in the above formula are 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 *less* any portion of such assessed value that may be exempt by operation of an ICIP Exemption (if any) applicable to the Improvements (Existing), *and*
- (II) the City's then-current real estate tax rate.

Adjusted CRET shall mean, for any City Tax Fiscal Year, an amount equal to the product of:

- (I) the then-current assessed value of Improvements *less the sum of*
 - (x) any portion of such assessed value that may be exempt by operation of an ICIP Exemption (if any) applicable to the Improvements (Existing), *and*
 - (y) the assessed value of the Improvements (Project) (as first assessed upon completion) provided same are exempt by operation of an ICIP Exemption, *and*

(II) the City's then-current real estate tax rate.

STRET or "Stabilized Real Estate Taxes" shall mean the CRET applicable on the May 25 prior to the PILOT 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.

If the Termination Date has occurred for reasons other than the Agency no longer owning an 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 Lessee shall make payments in lieu of real estate taxes on the Improvements equal to CRET.

(f) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project, the Lessee shall make any alterations of or additions to the Improvements ("**Additional Improvements**"), the Lessee shall: (i) deliver written notice to an Authorized Representative of the Agency of such Additional Improvements within thirty (30) days after the completion thereof; and (ii) request that the Improvements (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.

(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 to a special trust fund.

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

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

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 January 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 B 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 (x) the Land is located in an Empire Zone, and (y) the Lessee is or expects to become a Qualified Empire Zone Enterprise ("QEZE"), and (z) the Lessee has qualified for the QEZE Credit for Real Property Taxes for payments made by the Lessee pursuant to this Section 4.3, then, the Lessee shall make payments in lieu of real estate taxes as if the Agency did not have a leasehold estate in any portion of the Facility Realty, but in no event shall such payments for any given City Tax Fiscal Year exceed the amount determined to be "Eligible Real Property Taxes" for payments made in lieu of real property taxes pursuant to subdivision (e) of Section 15 of the New York Tax Law 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 that the Lessee has qualified or expects to qualify for QEZE tax Credits during the term of this Agreement, then the Lessee shall promptly provide the Agency with written notice of such qualification.

In the event the State repeals the Empire Zone program, or that part of it providing for QEZE Credit for Real Property Taxes, and as a result of such repeal the Lessee is no longer eligible to claim the QEZE Credit for Real Property Taxes 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 the QEZE Credit for Real Property Taxes, 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. Taxes, Assessments and Charges. The Lessee shall pay when due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Sublease Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the Rental Payments or other amounts payable hereunder or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall 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.

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

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

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Liability insurance for the benefit of the Lessee and the Agency 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 or any subcontractor to maintain liability insurance as a primary insured, and naming the Lessee, the Sublessee 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, the Sublessee 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; and

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

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, the Sublessee or the Agency is required by law to provide covering loss from injury, sickness, disability or death of 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 such contractors and subcontractors maintain all forms or types of insurance with respect to their employees required by law;

(v) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may require as set forth in a written notice from an Authorized Representative of the Agency submitted to an Authorized Representative of the Lessee.

(b) Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies admitted and authorized to write such insurance in the State.

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

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

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

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

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

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

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

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

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

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

(f) The Lessee, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5, and shall cause any sublessee, contractor or other insuring party under this Section 4.5 to take similar action with respect to such party's insurance required hereunder. The 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 OF COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE FACILITY OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE LESSEE OR THE SUBLESSEE.

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

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

Section 4.7. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Project, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land

use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including without limitation zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The 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 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.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) No thing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgage with respect to casualty insurance proceeds and condemnation awards which the Mortgage shall control the use of such casualty insurance proceeds and condemnation awards.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1. Dissolution of Lessee; Restrictions on Lessee. (a) The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State and (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents (except for the Project Documents not executed and delivered as of the Closing Date) to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer, and (4) delivers to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency, provided that if any modification to such Required Disclosure statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement.

(b) The Lessee further represents, covenants and agrees that it is and through the term of the Lease Agreement will continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be duly qualified to do business in the State.

(c) Nothing in this Section 6.1 is intended to prohibit any individual who shall own voting stock or other equity interest in the Lessee from effecting a transfer of voting or equity interest in the Lessee to

members of his or her immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, provided however, no such transfer shall relieve such individual from his or her obligations, if any, under the Guaranty Agreement.

Section 6.2. Indemnity. (a) The Lessee shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or the Sublessee or their 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 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 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 Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Lessee's knowledge and based on information included in the Phase I Environmental Site Assessment Report prepared by Ecosystems Strategies, Inc. (the "**Environmental Auditor**"), dated April 6, 2006, true and complete copies of which the Lessee has delivered to the Agency (collectively, the "**Audit**"), no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or

policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Lessee shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Lessee shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however**, that if any such tenant or subtenant shall be an Affiliate of the 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 (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the 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 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 4.6 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 to the Agency and its members, directors, officers, employees, agents and servants and persons under the Agency's control or supervision.

(e) To effectuate the purposes of this Section 6.2, the 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 with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available). Anything to the contrary in this Agreement notwithstanding, the covenants of the 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 Agency 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.

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

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

On the date of execution of this Agreement, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of, its fee of \$110,077 (said amount representing the \$111,777 financing fee, plus an annual administrative fee of \$800.00, less an application fee of \$2,500.00). The Lessee further agrees to pay as an annual administrative servicing fee to the Agency, the amount of \$800.00 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2005) payable on payable upon the Commencement Date and on every anniversary of the Commencement Date 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 Leasehold Title to Facility; Grant of Easements; Release of Facility Realty. (a) The Agency shall not assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its leasehold interest in the Facility or any part thereof during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

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

permit or license and to release the same from the leasehold estate of this Agreement and the Sublease Agreement.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from this Agreement and the leasehold estate created hereby and by the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements is situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty and convey title thereto to the Lessee, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the lien of this Agreement); and (v) any liens for taxes or assessments not then delinquent; **provided, however**, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Facility Realty so proposed to be released and the release of such portion of the Facility Realty is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

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

Section 6.5. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee, or the Sublessee or against any of the Rental Payments payable under this Agreement or the Sublease Agreement or the interest of the Agency or the Lessee or the Sublessee under this Agreement or the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such

Lien against the Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement or the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) none of the Lessee, the Sublessee or the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Permitted Encumbrances (and any other impairments of title whether or not appearing on the leasehold title insurance policy referred to in Section 2.3 hereof), so long as the Lessee shall pay the Rental Payments payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.7. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF, AND ANY SUBLESSEES, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND ANY SUBLESSEES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

(b) At the request of the Agency, the Lessee shall deliver to the Agency (i) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of the immediately

preceding calendar year, and at all times during such year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he or she shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto; and (ii) a certificate of an Authorized Representative of the Lessee that the insurance he maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency, the Lessee will execute, acknowledge and deliver to the Agency a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative after due inquiry, no default under or breach of any of the terms hereof which, with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge.

(c) The Lessee shall immediately notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document of which he has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.9. Employment Information, Opportunities and Guidelines. (a) Annually, by August 1 of each year until the termination of this Agreement the Lessee shall submit and shall cause the Sublessee to submit to the Agency an Employment and Benefits Report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the Lessee and shall attach thereto a copy of the Lessee's final payroll report evidencing the total number of employees employed by the Lessee during such reporting period.

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

(c) The Lessee (on behalf of itself and the Sublessee) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and the Sublessee and the

employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 and any other applicable laws, rules or regulations. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee and the Sublessee which is pertinent to the Lessee or the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or the Sublessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "**Employment Information**") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 1995, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

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

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

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

Section 6.13. Subtenant Survey. The Lessee shall file with the Agency by January 1 of each year commencing January 1, 2008, 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 hereto as Schedule B.

Section 6.14. 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 D hereto.

Section 6.15. Anti-Raiding Prohibition. If the Lessee, with respect to any proposed Tenant Lease, request the Agency to determine whether (A) such Tenant's location at the Facility is reasonably necessary to discourage such Tenant from removing its business to a location outside of the State or (B)

such Tenant's location at the Facility is reasonably necessary to preserve such Tenant's competitive position in its industry or (C) neither "(A)" or "(B)" is the case, the Agency, upon receipt of such request, shall make a determination within thirty (30) days and such determination shall be evidenced by a certificate of an Authorized Representative of the Agency.

Section 6.16. Architect's Certificate and Construction Manager's Certificate. Within ninety days (60) days of the Commencement Date, the Lessee shall deliver to the Agency an executed Construction Manager's Certificate and Architect's Certificate, in the forms attached hereto as Schedule E and Schedule F, respectively.

Section 6.17. Signage at the Facility. Promptly after the Commencement Date, the Lessee shall erect at the Facility, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign (the "Sign") with the following information upon it:

FINANCIAL ASSISTANCE PROVIDED THROUGH THE

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

Mayor Michael Bloomberg

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Agency in writing or electronically; and (ii) the minimum size of the sign shall be four feet by eight feet; and (iii) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Facility until completion of the Project. The Lessee may erect any other sign at the Facility in accordance with the Legal Requirements.

Section 6.18. . Certain Continuing Representations. If at any time during the term of this Agreement, the representation or warranty made by the Lessee pursuant to Section 1.5(s) hereof would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Lessee shall be deemed in default under this Agreement unless the Agency shall, upon written request by the Lessee, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation and warranty shall no longer be false, misleading or incorrect in a material respect.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.15, 6.16, 7.6, 8.4, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

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

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

(f) Any representation or warranty made (i) by the Lessee or any other Person (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by the Lessee herein or by the Lessee, or by any Guarantor in any other Project Document, or (iii) in any Required Disclosure Statement, 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) The commencement of proceedings to foreclose the lien of Mortgage or of any other mortgage or lien on the Facility Realty;

(h) Any loss of its leasehold interest by the Agency to the Facility Realty;

(i) An "Event of Default" under the Guaranty Agreement or the Sublease Agreement shall occur and be continuing; or

(j) The Lessee or any Guarantor shall become a Prohibited Person.

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

(a) The Agency may terminate this Agreement (with the effect that the term of the Company Lease and this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of the Company Lease and this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate; or

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

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

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

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

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

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

Section 7.5. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default

hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

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

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

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

Section 8.2. Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's leasehold interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee, at the sole cost and expense of the Lessee all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in the Facility and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

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

Section 8.3. Reserved.

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

Section 8.5. Recapture of Agency Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the 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:

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

(ii) 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).

(iii) 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 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.

(iv) 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.

(v) 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 Lessee and/or the Sublessee 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 and/or the Sublessee shall have failed to complete the Project by the Project completion date set forth in Section 2.2 hereof.

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

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

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

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

(g) The Lessee and/or the Sublessee 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 and/or the Sublessee 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 and/or the Sublessee 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 and/or the Sublessee at the Facility Realty prior to relocation; and (iii) the Lessee and/or the Sublessee 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 and/or the Sublessee 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 and/or the Sublessee 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. Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause

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

The Lessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee.

Section 9.2. Priority. Pursuant to the Mortgage the Agency and the Lessee will grant to the Mortgagee a mortgage lien on and a security interest in the Facility Realty as security for the payment of amounts due by the Lessee under the Mortgage Note. This Agreement shall be subject and subordinate to the Mortgage and to such mortgage liens and security interests so created thereby; provided, however, that nothing in said Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Lessee.

Section 9.3. Assignment or Sublease. (a) The Lessee shall not at any time except as permitted by Section 6.1 hereof, assign or transfer this Agreement.

(b) The Lessee shall have the right to permit other Persons to utilize space in the Facility (such Persons, collectively, "**Facility Tenants**") from time to time and to enter into Tenant Leases in connection therewith; provided however, that in each case (1) the Person delivers to the Agency the Required Disclosure Statement in the form set forth in Schedule G hereto without any modifications thereto unless such modifications have been previously approved by the Agency in writing, (2) the Lessee shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement, (3) the Person shall utilize the Facility as an Approved Facility and a qualified "project" as defined in the Act, (4) each Tenant Lease will not diminish or impair the obligation of the Lessee to carry the insurance required under Section 4.5 hereof, and that such insurance coverage shall in no manner be limited by such sublease or use of the Facility, and (5) each Tenant Lease contains (i) a representation from the Facility Tenant stating either of the following: (A) that such Facility Tenant's occupancy at the Facility will not result in the removal of a plant or facility of such Tenant located outside of the City, but within the State, to the Facility or in the abandonment of one or more of such plants or facilities of such Tenant located outside of the City but within the State or (B) that such Facility Tenant's location at the Facility is reasonably necessary to discourage such Facility Tenant from removing its business to a location outside of the State or is reasonably necessary to preserve

such Facility Tenant's competitive position in its industry, (ii) provisions requiring the Tenant to deliver to the Lessee, upon the Lessee's request, the Facility Tenant's most recently filed Form NYS-45 and Form NYS-45-ATT (or any successor forms therefor), (iii) provisions requiring the Facility Tenant to provide to the Lessee such information as the Lessee may need to enable the Lessee to annually submit to the Agency the subtenant survey in the form of Schedule B hereto, (iv) a provision providing that it shall be an event of default under the Tenant Lease subject to termination by the Lessee, at the direction of the Agency, if the information contained in the Required Disclosure Statement delivered by the Tenant to the Agency should prove to be false, misleading or incorrect in any material respect; and (v) provisions requiring the Facility Tenant to annually submit to the Lessee an annual employment report in the form set forth in Schedule A hereto.. Upon the Agency's request, the Lessee shall deliver to the Agency a copy of the current form of any Tenant Lease.

(c) The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2008, a certificate of an Authorized Representative with respect to all tenancies in effect at the Facility Realty, in the form attached hereto as Schedule B.

Section 9.4. Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto; provided, however, that no amendment shall be effective unless the Lessee has obtained the prior written consent of the Mortgagee.

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

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

(z) if to the Lessee, to 221 McKibbin Owner LLC, 1155 Manhattan Avenue, Brooklyn, New York 11222, Attention: Brian T. Coleman; with a copy to Wolf, Block, Schorr & Solis-Cohen LLP, 250 Park Avenue, New York 10177, Attention: Richard B. Salomon, Esq.

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

Any notice, demand or report required to be given hereunder by the Agency or the Lessee shall also be delivered, at the same time and in the same manner as such notice, demand or report is required to be given to the Agency or the Lessee hereunder, to the Sublessee.

The Agency shall deliver to the Mortgagee a copy of any notice of default or notice of its intent to convey title to the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be

delivered at the same time and in the same manner as such notice is required to be given to the Lessee, addressed as follows: if to Mortgagee, to: Sovereign Bank, 195 Montague Street, Brooklyn, New York 11201, Attention: Fred Gatto, with a copy to Cullen and Dykman LLP, 44 Wall Street, 19th Floor, New York, NY 10005, Attention: Paul Wood, Esq.

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

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

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

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

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

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

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

Section 9.13. WAIVER OF TRIAL BY JURY. THE PARTIES DO HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE FACILITY OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

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

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

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

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


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

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

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

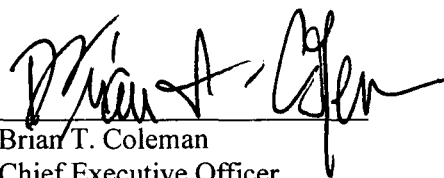
IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director or Deputy Executive Director and the Lessee has duly executed this Agreement all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**


By: _____
Maureen Babis
Deputy Executive Director

221 MCKIBBIN OWNER LLC

**BY: GREENPOINT MANUFACTURING AND
DESIGN CENTER LOCAL DEVELOPMENT
CORPORATION, its sole member**

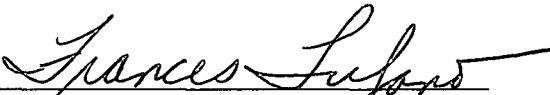

By: _____
Brian T. Coleman
Chief Executive Officer

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 11 day of June, in the year 2007 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

FRANCES TURANO
Notary Public, State of New York
No. 0170580131
Qualified in Queens County,
Commission Expires June 16, 2007

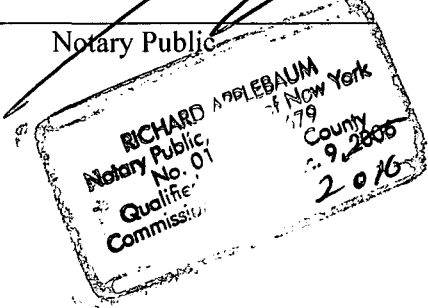
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 29 day of June in the year 2007, before me, the undersigned, personally appeared Brian T. Coleman, 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



RICHARD APPLEBAUM
Notary Public,
No. 01
Qualified
Commission Expires
9/2008
County of New York
2016

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>
3082	73	221 McKibbin Street, Brooklyn, New York 11206

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

Schedule A Description

Underwriter No. 413-K-0874

Title Number LTNYC-0767A-K-06

Policy Number: 1202023-0014911

Page 1

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of McKibbin Street distant 190 feet easterly from the corner formed by the intersection of the easterly side of Bushwick Avenue with the northerly side of McKibbin Street;

RUNNING THENCE northerly at right angles to McKibbin Street 178 feet 4 3/4 inches;

THENCE easterly parallel with Boerum Street 8 feet 1/8 of an inch to a line drawn parallel with Bushwick Avenue and distant 174 feet 9 1/2 inches easterly therefrom;

THENCE northerly parallel with Bushwick Avenue 87 feet 6 inches to the southerly side of Boerum Street;

THENCE easterly along the southerly side of Boerum Street 25 feet;

THENCE southerly parallel with Bushwick Avenue 87 feet 6 inches;

THENCE easterly parallel with Boerum Street 286 feet 2 1/2 inches;

THENCE southerly at right angles to McKibbin Street 139 feet 5 inches to the northerly side of McKibbin Street; and

THENCE westerly along the northerly side of McKibbin Street 316 feet 10 inches to the point or place of BEGINNING.

DESCRIPTION OF THE FACILITY EQUIPMENT

[NONE]

PROJECT COST BUDGET

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

Uses of Funds		Sources of Funds	
Closing Costs (+soft costs)	\$1,495,488	Company Funds	\$4,000,000
Purchase Price	\$5,500,000	Mortgages	\$7,004,000
Improvements	\$4,008,512		
Total Project Uses	\$11,004,000	Total Project Sources	\$11,004,000

EMPLOYMENT and BENEFITS REPORT
For the Fiscal Year July 1, 200[] - June 30, 200[] (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 1st of each year during the term of Project.

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, 200[]
2. Number of non-permanent Full-Time Employees as of June 30, 200[]
3. Number of permanent Part-Time Employees as of June 30, 200[]
4. Number of non-permanent Part-Time Employees as of June 30, 200[]
5. Number of Contract Employees as of June 30, 200[]
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, 200[].

- 7. Number of employees included in item 6 above who reside in the City of New York
8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? Y N (please circle Y or N)

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

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

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

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

- 14. Value of sales and use tax exemption benefits \$
15. Value of Commercial Expansion Program ("CEP") benefits \$
16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$
17. Were physical improvements made to any Project Location during FY '[] at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? Y N (please circle Y or N)

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

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

Entity Name:
Signature By: Date:
Name (print): Title:

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:
NYC IDA
Attention: Compliance Dept.
110 William Street, 3rd Floor
New York, NY 10038

QUESTIONS: PLEASE CONTACT THE IDA COMPLIANCE HELPLINE AT (212) 312-3963

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 an IDA Lease Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to an IDA Lease Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to an IDA Lease 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 the Facility.

"Facility" 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.

"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 the Facility.

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

"Part-Time Employee" is an employee who works less than 35 hours per week at the Facility.

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

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

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

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

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

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

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

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

20-- subtenant survey

221 McKibbin Owner LLC
221 McKibbin Street
Brooklyn, NY 11206

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

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

Subtenant	Floor	Square Footage Leased	Lease Begins	Lease Ends
-----------	-------	--------------------------	--------------	------------

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

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number: _____

Please fax the completed form to:
New York City Industrial Development Agency
Compliance Unit
212-618-5738

HelpLine: 212-312-3963

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of 221 McKibbin Owner LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(c) of that certain Lease Agreement, dated as of June 1, 2007 (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 temporary or permanent certificate of occupancy, (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the 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 _____, ____.

221 MCKIBBIN OWNER LLC

By: _____
Name:
Title:



LOCATION & CONTACT INFORMATION
Due Date By Facsimile: August 1

221 McKibbin Owner LLC
221 McKibbin Street
Brooklyn, NY 11206

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:

Project Name: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____
(Please print CLEARLY)

Signature: _____

Backup Contact Name/Title/Phone Number:

FAX YOUR RESPONSE TO: (212) 618-5738

Or mail to:
NYC IDA
Attention: Compliance Dept.
110 William Street, 3rd Floor
New York, NY 10038

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

[Construction Manager] [General Contractor] Certificate

June __, 2007

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

Re: New York City Industrial Development Agency Project to assist in the financing of certain improvements to the premises described in Schedule A hereto (the "Premises")

To Whom It May Concern:

The undersigned ("Construction Manager") ("General Contractor") understands that New York City Industrial Development Agency is providing financial assistance to 221 McKibbin Owner LLC, (the "Company"), which financial assistance will be used to assist the Company with the construction of the improvements described as: _____ (the "Improvements") on the Premises (the "Project"). [Construction Manager/General Contractor] has been engaged to act as the [construction manager/general contractor] in connection with the construction the Improvements pursuant to the provisions of a certain contract between the Company and the [Construction Manager/General Contractor] dated June __, 2007 (the "Contract"). The Construction Manager/General Contractor has reviewed certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in the Architect's Certification, dated [____], by _____, the architect for the Project.

The undersigned [Construction Manager][General Contractor] does hereby certify and represent to you as follows:

1. All permits, licenses, certificates, consents and approvals required in connection with the commencement of construction of the Improvements, including but not limited to, curb-cut permits, building permits and permits relating to utilities, have been duly, validly and unconditionally issued by the appropriate governmental agencies (federal, state and local) and private authorities and agencies.
2. The following are the approvals, authorizations, permits or licenses currently issued that are necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations:

- Zoning Department of Buildings
- New Building Department of Buildings
- Sewer Permit Department of Environmental Protection
- Sprinklers Department of Buildings
- Standpipe Department of Buildings
- Generator Department of Buildings
- Paving Plan Department of Buildings
- Street Opening Department of Transportation

- Asbestos Control Program

Department of Environmental Protection

3. The following are the only other approvals, authorizations, permits or licenses necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations, which have not been obtained as of this date and which are necessary for the construction of the Improvements:

- Fire Alarm Department of Buildings
- Tenant Work Department of Buildings
- Electrical Department of Buildings

[List all other applicable items]

4. The undersigned is familiar with the process for obtaining the approvals, authorizations, permits and licenses necessary to construct and occupy the Improvements, and as to those approvals, authorizations, permits and licenses not yet obtained, the undersigned knows of no reason why the same should not be issued when required by the Company upon the payment of the approved fee so as to not delay the construction and occupancy of the Improvements. Such approvals can be obtained in the ordinary course of business so as to not delay the construction of the Improvements, and the issuance of such permits by the applicable government authority is ministerial and not discretionary.

5. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.

6. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

7. Construction Manager/General Contractor duly licensed and in good standing in the State of New York to perform all work described in the Contract.

The statements contained in this letter are an expression of the undersigned's opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under its Contract with the Company in accordance with generally accepted standards of construction industry practice.

Very truly yours,

By _____
Name:
Title:

SCHEDULE A

DESCRIPTION OF THE PREMISES

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

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
3082	73	221 McKibbin Street Brooklyn, NY 11206

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

Architect's Certificate

June __, 2007

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

Re: New York City Industrial Development Agency Project to assist in the financing of certain improvements to the premises described in Schedule A hereto (the "Premises")

To Whom It May Concern:

The undersigned ("Architect") understands that New York City Industrial Development Agency ("IDA") is providing financial assistance to 221 McKibbin Owner LLC (the "Company"), which financial assistance will be used to assist the Company with the construction of the improvements described in Exhibit A attached hereto (the "Improvements") on the Premises (the "Project"). Architect has been engaged to act as the architect for the Improvements pursuant to the provisions of a certain architectural contract also described in Exhibit A attached hereto (the "Contract"). Architect has prepared certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in Exhibit B attached hereto.

The undersigned Architect does hereby certify and represent to you as follows:

1. The Architect prepared and supervised the preparation of the Plans and Specifications.
2. All of the Improvements are located within the boundaries of the Premises and in accordance with all "set-back" requirements. To my knowledge after due inquiry, limited to a review of the Title Report, issued on _____ by Commonwealth Land Title Insurance Company (the "Title Report") and the survey of the Premises, dated June 1, 2006 prepared by American Engineering Services, P.C. (the "Survey"), the location of the Improvements, if constructed substantially in accordance with the Plans and Specifications, will not be affected by any existing easements affecting the Premises, nor will the Improvements be located within or encroach into any easement area, nor shall the location of the Improvements violate any restriction, condition or covenant affecting the Premises.
3. The Plans and Specifications comply with all applicable federal, state and municipal laws, ordinances, rules and regulations regarding zoning, building and fire codes and ordinances. To my knowledge after due inquiry, limited to a review of the Title Report and the Survey, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will likewise comply with all covenants, conditions, easements and restrictions to which the Improvements are subject.

4. The Premises is zoned in accordance to the NYC Zoning Ordinance and such zoning classification permits the construction of the Improvements and the as contemplated in the Plans and Specifications and the intended use of the Premises by the Company.
5. The Premises does not require any additional on-site parking to satisfy all zoning and other governmental requirements. Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Premises, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans and Specifications. No easements over land of others is called for or indicated by the Plans and Specifications for access or egress to the Premises or parking on the Premises, or for any such facilities or utilities, and design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Plans and Specifications.
6. Water, sewer, drainage, gas, electric, telephone and other utilities required for the development and operation of the Improvements are available or have been included in the Plans and Specifications of sufficient design and capacity to meet the requirements of the Improvements.
7. The Premises constitutes one (1) legally subdivided zoning lot (as set forth in and described in Schedule A hereto) separate from any other parcel of real property.
8. The Budget (with projected draw schedule) attached hereto as Exhibit B is complete and accurately reflects the correct, anticipated cost and projected timing of construction of the Improvements as designed. The amounts set forth in the Budget are adequate and sufficient for satisfying all fees and expenses of Architect in designing the Improvements.
9. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.
10. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.
11. Architect is an architect duly licensed to practice architecture in the State of New York.

The statements contained in this letter are an expression of the undersigned's professional opinion, are made to the best of the undersigned's knowledge, information and belief, and are based on the undersigned's performance of services under its agreement with the Company in accordance with generally accepted standards of professional practice.

Very truly yours,

By _____
Name:
Title:

SCHEDULE A

DESCRIPTION OF THE PREMISES

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

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
3082	73	221 McKibbin Street Brooklyn, NY 11206

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

EXHIBIT A

1. **The Improvements**

The term "Improvements" as used herein shall, collectively, mean the acquisition of an approximately 52,500 square foot parcel of real property located at 221 McKibbin Street, Brooklyn, New York (as more particularly described in Schedule A hereto) and an approximately 72,000 square foot building thereon to be used by the Company.

2. **The Architects Contract**

Contract dated _____, 2007, between the Company, as owner, and _____, as architect.

EXHIBIT B

List of Plans and Specifications

FORM OF REQUIRED DISCLOSURE STATEMENT

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 6.1] [Section 9.3] of that certain Lease Agreement, dated as of June 1, 2007, between the Agency and 221 McKibbin Owner LLC (the "Lease Agreement") THAT:

[if being delivered pursuant to 6.1 of the Lease Agreement] None of the surviving, resulting or transferee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity;

[if being delivered pursuant to 9.3 of the Lease Agreement] None of the assignee, transferee or sublessee entity, any of the Principals of such entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such entity;

(i) 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;

(ii) has been convicted of a misdemeanor related to the truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

(iv) is currently under indictment for a felony criminal offense, or has received formal written notice from a federal, state or local governmental agency or body that is currently under investigation for a felony criminal offense; or

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

Governing Body shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated

organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean an individual or, with respect to any Person that is an entity, the chief executive officer, the chief financial officer and the chief operating officer of such entity, or person or persons holding equivalent positions.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of _____, 200_.

[NAME OF CERTIFYING ENTITY]

By: _____
Name:
Title:

Exceptions, if any, to representation under Section 1.5(s)