

Lease Agreement

NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

AND

THE ISAMU NOGUCHI FOUNDATION, INC.

LEASE AGREEMENT

Dated as of February 1, 2003

\$9,000,000

New York City Industrial Development Agency
Adjustable Rate Demand Civic Facility Revenue Bonds
(2003 The Isamu Noguchi Foundation, Inc. Project)

Record and Return to:
Hawkins, Delafield & Wood
67 Wall Street
New York, New York 10005
Attention: Christopher M. Waterman, Esq.

Address ³²⁻⁶¹
32-37 and ³²⁻⁵⁵ 32-61 Vernon Blvd.
Long Island City, New York

<u>Section</u>	<u>Block</u>	<u>Lots</u>
3	314	1, 2001 (1001) & 1002

TABLE OF CONTENTS

Page

ARTICLE I

Definitions and Representations

Section 1.1. Definitions 3
Section 1.2. Construction 7
Section 1.3. Representations and Warranties by Agency 7
Section 1.4. Findings by Agency 8
Section 1.5. Representations and Warranties by Lessee 8

ARTICLE II

The Project

Section 2.1. The Project 11
Section 2.2. Completion by Lessee 12
Section 2.3. Issuance of Series 2003 Bonds 12
Section 2.4. Title Insurance 12

ARTICLE III

Lease of Facility and Rental Provisions

Section 3.1. Lease of the Facility 14
Section 3.2. Duration of Term 14
Section 3.3. Rental Provisions; Pledge of Agreement and Rent 14
Section 3.4. Obligation of Lessee Unconditional 15
Section 3.5. Payment for Tendered Series 2003 Bonds 16

ARTICLE IV

Maintenance, Taxes, Payments in Lieu of Taxes and Insurance

Section 4.1. Maintenance, Alterations and Improvements 17
Section 4.2. Removal of Property of the Facility 18
Section 4.3. Payment in Lieu of Real Estate Taxes 19
Section 4.4. Taxes, Assessments and Charges 19
Section 4.5. Insurance 20
Section 4.6. Advances by Agency, Trustee or Bondholders 23
Section 4.7. Compliance with Law 23

Table of Contents
(continued)

Page

ARTICLE V

Damage, Destruction and Condemnation

Section 5.1.	Damage, Destruction and Condemnation	25
--------------	--	----

ARTICLE VI

Particular Covenants

Section 6.1.	Restrictions on Lessee	28
Section 6.2.	Indemnity	29
Section 6.3.	Compensation and Expenses of Trustee, Bond Registrar, Paying Agents, Original Purchaser and Agency	32
Section 6.4.	Retention of Title to Facility	33
Section 6.5.	Lessee's Covenant as to Tax Exemption	33
Section 6.6.	Financial Statements; No-Default Certificates	33
Section 6.7.	Discharge of Liens	35
Section 6.8.	Agency's Authority; Covenant of Quiet Enjoyment	35
Section 6.9.	No Warranty of Condition or Suitability	35
Section 6.10.	Amounts Remaining in Funds	36
Section 6.11.	Issuance of Additional Bonds	36
Section 6.12.	Employment Information, Opportunities and Guidelines	36
Section 6.13.	Redemption Under Certain Circumstances; Special Covenants	37
Section 6.14.	Further Assurances	39
Section 6.15.	Recording and Filing	39
Section 6.16.	Right to Cure Agency Defaults	40
Section 6.17.	Preservation of Exempt Status	40
Section 6.18.	Securities Law Status	40
Section 6.19.	Covenants as to Maintenance of Property, Etc.	41
Section 6.20.	Obligations under and Covenants with Respect to the Condominium Declaration and Condominium By-laws	41
Section 6.21.	[Reserved].	42
Section 6.22.	Negative Covenants	42

ARTICLE VII

Events of Default; Remedies

Section 7.1.	Events of Default	44
Section 7.2.	Remedies on Default	45
Section 7.3.	Reletting of Facility	46

Table of Contents
(continued)

Page

Section 7.4.	Remedies Cumulative	46
Section 7.5.	No Additional Waiver Implied by One Waiver	47
Section 7.6.	Effect on Discontinuance of Proceedings	47
Section 7.7.	Agreement to Pay Attorneys' Fees and Expenses	47

ARTICLE VIII

Options

Section 8.1.	Options	48
Section 8.2.	Surrender on Exercise Option to Terminate.....	49
Section 8.3.	Option to Purchase or Invite Tenders of Bonds	49
Section 8.4.	Termination of Agreement.....	50
Section 8.5.	Recapture of Agency Benefits.....	50

ARTICLE IX

Miscellaneous

Section 9.1.	Indenture; Amendment	52
Section 9.2.	Force Majeure.....	52
Section 9.3.	Assignment or Sublease	52
Section 9.4.	Priority of Indenture.....	53
Section 9.5.	Benefit of and Enforcement by Bondholders	54
Section 9.6.	Amendments.....	54
Section 9.7.	Notices	54
Section 9.8.	Prior Agreements Superseded	54
Section 9.9.	Severability.....	54
Section 9.10.	Inspection of Facility	54
Section 9.11.	Effective Date; Counterparts.....	55
Section 9.12.	Binding Effect	55
Section 9.13.	Net Lease.....	55
Section 9.14.	Law Governing.....	55
Section 9.15.	Investment of Funds.....	55
Section 9.16.	Investment Tax Credit.....	55
Section 9.17.	Waiver of Trial by Jury.....	55
Section 9.18.	Non-Discrimination	55
Section 9.19.	No Recourse under This Agreement or on Bonds.....	56
Section 9.20.	Date of Agreement for Reference Purposes Only	56

TABLE OF CONTENTS

Page

APPENDICES

DESCRIPTION OF PROJECT
DESCRIPTION OF FACILITY REALTY
SCHEDULE A - Annual Employment Report
SCHEDULE B - Subtenant Survey

LEASE AGREEMENT

This Lease Agreement (this "Agreement"), made and entered into as of February 1, 2003, between NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and THE ISAMU NOGUCHI FOUNDATION, INC., a not-for-profit corporation organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), having its principal office at 32-37 Vernon Boulevard, Long Island City, New York 11106, party of the second part:

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 and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee to induce the Lessee to commence with the financing of a portion of the costs of the renovation of a civic facility (the "Facility") owned by the Lessee, consisting of the construction of improvements to an approximately 15,000 square foot building located at 32-37 and 32-61 Vernon Boulevard, Long Island City, New York, to provide museum space and space for cultural education programs (the "Project"); and

WHEREAS, the Facility (i) will be leased by the Lessee to the Agency pursuant to a Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency, and (ii) will be subleased by the Agency to the Lessee pursuant to this Agreement; and

WHEREAS, in furtherance of said purpose, the Agency adopted a resolution on October 23, 2001 authorizing the Project and undertaking to permit the issuance of its revenue bonds to finance a portion of the costs of the Project and thereupon to lease the Facility from the Lessee for sublease to the Lessee; and

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

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project and for incidental and related costs thereto, will issue and sell its Adjustable Rate Demand Civic Facility Revenue Bonds (2003 The Isamu Noguchi Foundation, Inc. Project), in the aggregate principal amount of \$9,000,000 (the "Series 2003 Bonds") pursuant to the Act, a resolution of the Agency adopted on November 13, 2001, as amended on September 10, 2002, and the Indenture of Trust, dated as of even date herewith, between the Agency and Wachovia Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, concurrently with the execution hereof, (i) the Lessee will grant a negative pledge with respect to its property, and (ii) the Lessee will guarantee the payment of the principal of, Sinking Fund Installments for, Purchase Price, redemption premium, if applicable, and interest on the Series 2003 Bonds pursuant to a guaranty agreement dated as of even date herewith with the Trustee;

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

ARTICLE I

Definitions and Representations

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

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 Lease Agreement, dated as of February 1, 2003, between the Agency and the Lessee, and shall include any and all amendments and supplements hereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director of the Agency, General Counsel or Vice President for Legal Affairs, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Lessee, its Chairman, any Vice Chairman, Executive Director, its Chief Operating Officer, its Chief Financial Officer, any President, any Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary or any officer or employee authorized to do specific acts or to discharge certain specific duties hereunder and of whom another Authorized Representative of the Lessee gives written notice to the Trustee and the Agency.

Bonds shall mean the Series 2003 Bonds and any Additional Bonds.

City shall mean The City of New York.

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

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

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Lessee and the Agency with respect to the Facility, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Condominium shall mean 32-37 Vernon Boulevard Condominium as established pursuant to the Condominium Declaration.

Condominium By-laws shall mean the Bylaws established and adopted pursuant to the Condominium Declaration, as the same may be amended after the Closing Date from time to time in accordance therewith and with this Agreement.

Condominium Declaration shall mean the "Declaration of Condominium and By-laws of 32-37 Vernon Boulevard Condominium", executed by Isamu Noguchi as Declarant and dated May 5, 1984, recorded on August 6, 1984 in the Queens County Office of the Register of The City of New York, in Reel 1716, Page 1615 and designated as Condominium Plan No. 77, and as the same may be further amended from time to time in accordance therewith and with this Agreement.

Condominium Documents shall mean, collectively, the Condominium Declaration and the Condominium By-laws.

Declaration of Restrictive Covenant shall mean the Declaration of Restrictive Covenant, dated as of December 3, 2001, from the Lessee to the City, recorded on August 6, 1984 in the Queens County Office of the Register of The City of New York, in Reel 6154, at Page 1115.

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

Facility or Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices hereto, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

Fiscal Year of the Lessee or Fiscal Year shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30, or such other year of similar length as to which the Lessee shall have given prior written notice thereof to the Agency and the Trustee at least ninety (90) days prior to the commencement thereof.

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

Legal Requirements shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, 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 The Isamu Noguchi Foundation, Inc., a not-for-profit corporation organized and existing under and by virtue of the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Moody's shall mean Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Agency, by notice to the other Notice Parties.

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

Original Purchaser shall mean JPMorgan Chase Bank, a banking corporation organized under the laws of the State of New York, as the initial purchaser of the Series 2003 Bonds on behalf of clients for whom it acts as a fiduciary or mutual funds for which it acts as an advisor or servicer or any investment vehicle established by it or for it or any of its affiliates.

Prohibited Person shall mean:

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

(ii) any Person (A) who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or who is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) who directly or indirectly controls, is controlled by, or is under common control with a Person who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or who is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure;

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

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

Project shall mean the renovation of the Facility more particularly described in the recitals hereto.

Project Supervisor shall mean George Juergens of the Lessee or any other person designated by the Lessee upon written notice to the Agency and the Trustee.

Series 2003 Bonds shall mean the \$9,000,000 Adjustable Rate Demand Civic Facility Revenue Bonds (2003 The Isamu Noguchi Foundation, Inc. Project) of the Agency issued under the Indenture.

Tax-Exempt Organization shall mean a Person organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws in effect from time to time.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the date of original issuance of the Series 2003 Bonds, from the Agency and the Lessee to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

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

Units shall mean, collectively, those certain units known as the Foundation Unit and the Noguchi Office Unit, as so designated in the Condominium Declaration, and located on Lot 1001 and Lot 1002, respectively, of Block 314 in Queens County, New York and known by the street address 32-37 Vernon Boulevard, Long Island City, New York.

Unrestricted Investment Assets shall mean any of the following assets, valued in each case at the specified percentage of their market value on the measurement date:

<u>Asset</u>	<u>Percentage</u>
cash or deposit accounts	100.00%
Class I Securities	90.00%
Class II Securities	80.00%
Class III Securities	66.67%

Class I Securities: Direct Obligations of the United States of America or any obligations of any agency of the United States of America which represent full faith and

credit obligations of the United States of America, in each case having a maturity of less than five years from the measurement date.

Class II Securities: Direct Obligations of the United States of America or any obligations of any agency of the United States of America which represent full faith and credit obligations of the United States of America, in each case having a maturity of greater than five years from the measurement date.

Class III Securities: Any equity security traded on a U.S. national securities exchange which is issued by a corporation having total capitalization in excess of \$1 billion, or direct debt of a domestic corporation having a market value capitalization greater than \$1 billion, which debt is rated "A" or better by Moody's Investors Services, Inc. and which has a maturity not greater than 5 years from the measurement date.

Any other assets may be considered for inclusion in the calculation of Unrestricted Investment Assets at the sole discretion of the Original Purchaser.

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

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

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

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

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

Section 1.3. Representations and Warranties by Agency. The Agency makes the following representations and warranties:

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

(b) In order to finance and/or refinance a portion of the cost of the Project, the Agency proposes to issue the Series 2003 Bonds in the aggregate principal amount of \$9,000,000. The Series 2003 Bonds will mature, bear interest, be redeemable, be subject to tender and have the other terms and provisions set forth in the Indenture.

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 to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the subleasing thereof to the Lessee is reasonably necessary to induce the Lessee to proceed with the Project.

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

(a) The Lessee is a not-for-profit corporation 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 certificate of incorporation or by-laws, has the corporate power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Security Document to which it is 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 Security Document to which the Lessee is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite corporate action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or the certificate of incorporation or by-laws of the 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 (including, without limitation, any of the Condominium Documents and the Declaration of Restrictive Covenant), or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

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

(d) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Lessee to proceed with the Project.

(e) The completion of the Project has not resulted in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee or any

Affiliate thereof from outside the City (but within the State of New York) to within the City or in the abandonment of one or more of such plants or facilities of the Lessee or any Affiliate thereof within the State but outside of the City.

(f) The total cost of the Project being funded with the Series 2003 Bonds is at least \$9,000,000, which represents only a portion of the total cost to the Lessee.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2003 Bonds shall be treated on the books of the Lessee as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

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

(i) No part of the proceeds of the Series 2003 Bonds will be used to finance inventory or will be used for working capital.

(j) The Project is included within the definition of "project" under the Act.

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

(l) The Project has been designed, and the operation of the Project is, in compliance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(m) 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 might adversely affect the ability of the Lessee to perform its obligations under this Agreement or any other Security Document to which the Lessee 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 Security Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Security Documents have been or will be obtained on a timely basis.

(n) The Lessee intends to operate the Facility or cause the Facility to be operated (i) in accordance with this Agreement, (ii) as a qualified "project" in accordance with and as defined under the Act, and (iii) as a "civic facility" as such term is used in the Act.

(o) The Lessee is organized and operated exclusively for not-for-profit purposes and no part of the earnings of the Lessee inures to the benefit of any person, private shareholder or individual.

(p) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Lessee in connection with the execution and delivery of this Agreement and each other Security Document to which the Lessee shall be a party, or in connection with the leasing of the Facility by the Lessee to the Agency concurrently with the issuance and delivery of the Series 2003 Bonds, have been duly obtained.

(q) There is no existing violation against the Facility filed by any court or administrative agency that may prohibit the ability of the Lessee to use or operate the Facility for its intended purposes or for which the Lessee has not agreed or made arrangements to have removed and satisfied of record.

(r) Pursuant to the Company Lease, the Lessee has vested the Agency with a valid leasehold estate in the Facility Realty.

(s) The Lessee is an organization described in Section 501(c)(3) of the Code, has received a letter from the Internal Revenue Service to that effect, and such letter has not been modified, limited or revoked.

(t) Facts and circumstances sufficient to form the basis of such letter continue to exist substantially as represented to the Internal Revenue Service.

(u) The Lessee is exempt from Federal income tax under Section 501(a) of the Code and it is in compliance with the provisions of the Code necessary to maintain its status as a Tax-Exempt Organization.

(v) The Lessee does not intend to use any proceeds of the Bonds 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; and the Lessee does not intend to give any of the proceeds of the Bonds to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(w) Neither the Lessee nor any Affiliate thereof is a Prohibited Person.

(x) The aggregate rentable square footage of the improvements constituting the Facility Realty is approximately 25,000 rentable square feet.

(y) The Condominium Declaration is in full force and effect and the Lessee is in compliance with the terms thereof. Neither the Company Lease, this Agreement nor any other Security Document conflicts with the terms of any of the Condominium Documents, and no consent is needed from the Condominium Board (as defined in the Condominium Declaration) with respect to the execution and delivery by the Lessee of the Company Lease, this Agreement or any other Security Agreement.

ARTICLE II

The Project

Section 2.1. The Project. (a) Pursuant to the Company Lease, the Lessee shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2003 Bonds a good and valid leasehold interest in the Facility Realty free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2003 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2002 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Lessee. The Project work shall be supervised by the Project Supervisor, and, in the event said person resigns or becomes incapable of undertaking or carrying out his duties hereunder, the Lessee, with the prior written consent of the Agency, shall appoint a successor.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Lessee, the Lessee has undertaken to proceed with the design of the Project, the preparation of the Facility site and the completion of the Project work. The Lessee agrees to complete the Project on behalf of the Agency under the supervision of the Project Supervisor.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation and delivery of any leases or memoranda thereof required in connection with the leasing of the Project, the delivery of any instruments and documents and their filing and recording, if required, and (ii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Project, 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, the Condominium and this Agreement. Upon completion of the Project, the Lessee will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee immediately upon receipt thereof.

(f) The Lessee shall take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs or, if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(g) A leasehold interest in all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first.

Section 2.2. Completion by Lessee. The Lessee unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by July 1, 2004, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement, the Condominium Documents and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in the Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement.

Upon completion of the Project, the Lessee shall deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Lessee substantially in the form set forth in Schedule A attached hereto, together with all attachments required therein.

Section 2.3. Issuance of Series 2003 Bonds. Contemporaneously with the execution and delivery of this Agreement, and subject to the terms and conditions hereof and of the Indenture, the Agency will sell and deliver the Series 2003 Bonds in the aggregate principal amount of \$9,000,000 under and pursuant to a resolution adopted by the Agency on November 13, 2001, as amended on September 10, 2002, authorizing the issuance of the Series 2003 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2003 Bonds shall be applied in accordance with Section 4.01 of the Indenture.

Section 2.4. Title Insurance. Not later than the delivery of the Series 2003 Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) leasehold title insurance in an amount not less than \$1,000,000 insuring the Agency's leasehold interest in the Facility under the Company Lease against loss as a result of defects in the leasehold interest of the Agency, and (b) a current survey of the site of the Facility certified to the Agency and the Trustee. The title insurance policy shall be subject only to Permitted Encumbrances and shall

provide for, among other things, the following: (1) full coverage against mechanics' liens; and (2) such other matters as the Agency shall reasonably request. Any proceeds of such leasehold title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in the Agency's leasehold interest. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Redemption Account of the Bond Fund.

ARTICLE III

Lease of Facility and Rental Provisions

Section 3.1. Lease of the Facility. Pursuant to the Company Lease, the Lessee has leased the Facility to the Agency. The Agency hereby subleases to the Lessee and the Lessee hereby subleases from the Agency the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Lessee shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a civic facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. 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 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 date of the original issuance of the Series 2003 Bonds and shall expire on the earliest of (i) February 1, 20__ (11:59 p.m., midnight New York City time), (ii) the day on which the Lessee ceases to possess the Facility Realty, or (iii) such date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility as the Agency has received under the Company Lease.

Section 3.3. Rental Provisions; Pledge of Agreement and Rent. (a) Subject to Section 3.3(h) below, the Lessee covenants to make rental payments, which the Agency agrees shall be paid by the Lessee directly to the Trustee for deposit in the Bond Fund, not later than 12:00 noon, New York City time, on the second Business Day next preceding each date that any payment of interest, Redemption Price, if applicable, Sinking Fund Installments, or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal, Sinking Fund Installments, Redemption Price, if applicable, of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with Section 10.01 of the Indenture, in immediately available funds, in the amount payable with respect to the Bonds on such date. The Lessee further agrees to pay all amounts stated to be paid by it, and agrees to do and perform all acts stated to be done and performed by it, pursuant to the Indenture.

(b) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal, Sinking Fund Installments, Redemption Price, if any, of and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Lessee shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

(c) In the event the Lessee should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so

paid shall continue as an obligation of the Lessee until the amount not so paid shall have been fully paid.

(d) The Lessee shall have the option to prepay its rental obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds.

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

(f) Pursuant to the Indenture the Agency will pledge and assign to the Trustee as security for the Bonds all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Lessee hereby consents to the above-described liens and security interests, and pledge and assignment of this Agreement.

(g) The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Lessee further covenants to use its best efforts to cause there to be obtained for the Agency any documents or opinions required of the Agency under the Indenture.

(h) Notwithstanding the provisions of this Agreement to the contrary, so long as the Original Purchaser is the owner of all of the Series 2003 Bonds, the Lessee shall pay that portion of the rental payments relating to the principal, Sinking Fund Installments, and Redemption Price of, and interest on, the Series 2003 Bonds directly to the Original Purchaser as provided in Section 2.07(b) of the Indenture. The Lessee shall send notice of each such rental payment to the Trustee, upon each such payment made to the Original Purchaser, which notice shall verify the amount of each such payment. In the event that the Lessee shall fail to pay any installment of the rental payments so payable to the Original Purchaser in accordance with this Section 3.3(h), interest on such overdue payment shall accrue from the due date thereof at a rate equal to the publicly announced "prime rate" of JPMorgan Chase Bank. The Lessee does hereby covenant and agree to defend, indemnify, and hold harmless the Agency and the Trustee from any costs, expenses, claims, demands, causes of action and/or any other liability of any nature whatsoever that may arise from the direct payment by the Lessee to the Original Purchaser in accordance with this Section 3.3(h). The Lessee shall cause the Original Purchaser to, upon written request made by the Agency, deliver to the Agency such information as may be requested by the Agency to confirm the principal amount Outstanding of the Bonds, the current interest rate, the performance status and any other information as may be reasonably requested relating to the Series 2003 Bonds.

Section 3.4. Obligation of Lessee Unconditional. The full faith and credit of the Lessee is pledged to the payments required to be made by the Lessee hereunder. The

obligation of the Lessee to pay the rent and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall constitute a general obligation of the Lessee and shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Holder of any Bond 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 any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

Section 3.5. Payment for Tendered Series 2003 Bonds. (a) The Lessee agrees, as provided in Sections 2.17, 2.19 and 5.13 of the Indenture, to pay rent to the Paying Agent, for the account of the Agency, as lessor, equal to all amounts necessary for the purchase of Series 2003 Bonds pursuant to Sections 2.17 and 2.19 of the Indenture and not deposited with the Paying Agent by the Remarketing Agent from the remarketing proceeds of the sale of such Bonds under Section 14.03 of the Indenture. Each such payment by the Lessee to the Paying Agent in accordance with this Section 3.5 shall be in immediately available funds and paid to the Paying Agent at its principal office by 4:00 p.m. (New York City time) on each Purchase Date. The Lessee further agrees to pay such immediately available funds to the Paying Agent at the times and in the manner specified in the Indenture.

(b) The Lessee hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Series 2003 Bonds tendered for purchase thereunder, including particularly those set forth in Sections 2.17 and 2.19 of the Indenture and in Articles V, XIII and XIV thereof. The Lessee shall have all of the rights and obligations provided in the Indenture with respect to the Lessee in connection with such transactions and the appointment of the Paying Agent and the Remarketing Agent thereunder. The Agency shall have no obligation or responsibility with respect to the purchase of Series 2003 Bonds or any related arrangements, except that the Agency at the expense of the Lessee shall cooperate in the making of any such arrangements.

(c) If the Lessee elects to cause the interest rate on the Series 2003 Bonds to be converted to the Term Interest Rate or to the Weekly Interest Rate pursuant to the Indenture, the Lessee shall deliver or cause to be delivered the notice, the Opinion of Bond Counsel and such other documents required under the Indenture in connection with such conversion, all as provided in Sections 2.11 and 2.11A of the Indenture.

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 designed and 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 security for the Bonds shall not be impaired. All replacements, renewals and repairs shall be at least equal in quality, class and value to the original work and be made and installed in compliance with all applicable Legal Requirements. 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 may make such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, 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, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$300,000, under the supervision of the Project Supervisor and only after the Lessee shall have furnished to the Agency and the Trustee, if requested by the Trustee upon direction of the Bondholders, a labor and materials payment bond, or other security, satisfactory to the Agency and the Trustee, and (v) such additions or alterations do not change the nature of the Facility so that it would not constitute a civic facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to the Company Lease, this Agreement and the Indenture, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to subject such property to the Company Lease and this Agreement and the lien and security interest of the Indenture, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment, furnishings and other personal property not constituting part of the Facility (the "Lessee's Property") without subjecting such property to the Company Lease or this Agreement. 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.

(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 Lessee in the Facility, the Company Lease or this Agreement except for Permitted Encumbrances.

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

Section 4.2. Removal of Property of the Facility. (a) The Lessee may remove from the Facility any fixture constituting part of the Facility Realty (the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided that:

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

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$25,000, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not constitute a civic facility and a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Redemption Account of the Bond Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default

hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$25,000 shall be retained by the Lessee.

(b) The Lessee shall deliver or cause to be delivered to the Agency and the Trustee appropriate documents subjecting such substitute or replacement property to the Company Lease and this Agreement, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents releasing the Agency's leasehold 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 and disbursements) incurred in subjecting to the Company Lease and this Agreement any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

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

Section 4.3. Payment in Lieu of Real Estate Taxes. 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 acquired by it or under its jurisdiction or control or supervision or upon its activities. In the event the Agency's interest in the Facility shall exempt any portion of the Facility from the imposition of real estate taxes, then, so long as the Lessee (and each other user of the Facility) remains an eligible not-for-profit corporation pursuant to the regulations of the New York City Department of Finance for purposes of determining exemption from New York City real estate taxes, and until the earlier of (i) the payment in full of all the Bonds Outstanding in accordance with Section 10.01 of the Indenture, and (ii) the date on which the Agency no longer has an interest in the Facility, the Lessee shall make no payments in lieu of real estate taxes on the land, buildings and improvements constituting part of the Facility. However, to the extent the Lessee is not an eligible not-for-profit corporation pursuant to the regulations of the New York City Department of Finance for purposes of determining exemption from New York City Real Estate Taxes and the Lessee would be obligated to pay any New York City real estate taxes, the Lessee shall not claim an exemption from such real estate taxes by virtue of the Agency's leasehold interest in the Facility.

Section 4.4. Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the rentals hereunder during the term of this Agreement and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions solely due to the Agency's leasehold interest in 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 interest in the Facility (unless the Lessee, as an eligible not-for-profit corporation, is exempt for reasons other than the Agency's leasehold interest in the Facility).

None of the foregoing shall prevent the Lessee from contesting 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 Lessee, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be requested by the Agency or the Trustee to protect the security intended to be offered by the Security Documents.

Section 4.5. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, and/or cause the Board of Managers of the Condominium, when and if applicable, to maintain 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 Protective Liability Insurance for the benefit of the Lessee, the Agency and the Trustee in a minimum amount of \$10,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) (A) Property damage insurance and (B) during any period of construction, reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by property damage insurance), Builders' All Risk Insurance written on "100% builders' risk completed value, non reporting form" including coverage therein for "completion and/or premises occupancy", and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, equipment, furniture, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee, the Agency or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts not less than 100% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency and the Trustee) not less often than once every three years, at the expense of the Lessee; any such

insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks;

(iii) General Liability insurance and/or Umbrella Liability insurance, including contractual liability coverage, naming the Lessee 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 \$10,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

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

(v) Flood insurance, to the extent not covered by property damage insurance, in an amount equal to the greater of the full replacement cost or the maximum amount then available under the National Flood Insurance Program;

(vi) Boiler and Machinery property damage insurance in respect to any steam and pressure boilers and similar apparatus located at the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductions customarily obtained for similar business enterprises; and

(vii) Such other insurance in such amounts and against such insurable hazards as the Agency or the Trustee from time to time may reasonably require.

(b) Specific Coverage required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating of "A-/X" or better.

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

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

(ii) subject to the terms of the Condominium Documents, provide that all insurance proceeds in excess of \$250,000 with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund;

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

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

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

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

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

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

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

(e) The Lessee shall deliver or cause to be delivered to the Agency and the Trustee the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the execution and delivery of this Agreement: (A) a broker's certificate of coverage confirming that the Lessee, as of the date of execution and delivery of this Agreement, has obtained Specific Coverage in accordance with the requirements of this Section 4.5 and Section 6.2 hereof, and (B) a certificate of liability insurance, evidence of property insurance, and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

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

(h) Nothing contained in this Section 4.4 or elsewhere in this Agreement or in any other Security Document shall be deemed to modify, impair, amend or limit any of the obligations of the Lessee to maintain insurance under any of the Condominium Documents.

Section 4.6. Advances by Agency, Trustee or Bondholders. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or any Bondholder, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or such Bondholder under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or such Bondholder shall become an additional obligation of the Lessee to the Agency, the Trustee or such Bondholder, 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, Trustee or such Bondholder. Any remedy herein vested in the Agency, the Trustee or Bondholders for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency, the Trustee or such Bondholder 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, 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) (the "Legal Requirements"), 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 will not, without the prior written consent of the Agency and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

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 Lessee, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be requested by the Agency or the Trustee to protect the security intended to be offered by the Security Documents.

ARTICLE V

Damage, Destruction and Condemnation

Section 5.1. Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole or part of the Facility shall be damaged or destroyed, or be taken or condemned by a competent authority for any public use or purpose, or by agreement between the Lessee and those authorized to exercise such right, or if the temporary use of the Facility or any part thereof shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Lessee under this Agreement or under any other Security Document; and

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

(b) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom shall be paid to the Trustee (subject to the terms of the Condominium Documents) and deposited in the Renewal Fund (except as otherwise provided in Section 4.5(d) hereof) and the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), 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, the Trustee or any Bondholder, nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to terminate this Agreement, and make advance rental payments to redeem the Bonds in whole in accordance with the Indenture.

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

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Lessee shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund to be applied to the redemption of the Bonds in accordance with the Indenture.

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

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

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

(iii) if requested by the Trustee upon direction of the Bondholders, be preceded by the furnishing by the Lessee to the Agency and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Trustee, 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) Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied and may be invested as provided in the Indenture.

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

(f) 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, or if the Board of Managers of the Condominium shall determine not to permit the Facility to be rebuilt, replaced, repaired or restored, the Lessee shall exercise its option to terminate this Agreement pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Lessee shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the

expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, 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.

ARTICLE VI

Particular Covenants

Section 6.1. Restrictions on Lessee. The Bonds will be payable by the Agency as to principal, interest and redemption premium, if any, out of the revenue derived from the subleasing of the Facility, including all revenues and rental income derived from or in connection with the Facility and moneys received under this Agreement, and the parties hereto understand that the purchasers of the Bonds will make their purchase in reliance in part upon the credit and financial condition of the Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its corporate existence, (ii) continue to be a not-for-profit education corporation constituting a Tax-Exempt Organization subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign corporation 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 execution and delivery of this Agreement; and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, upon prior written notice to the Agency and the Trustee consolidate with or merge into another not-for-profit corporation as shall constitute a Tax-Exempt Organization or permit one or more other not-for-profit corporations as shall constitute Tax-Exempt Organizations 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 not-for-profit corporation as shall constitute a Tax-Exempt Organization (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect), provided, however, that in the event that the Lessee is not the surviving, resulting or transferee corporation, as the case may be, such corporation (A) is a solvent not-for-profit corporation subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign corporation in the State, (B) is a Tax-Exempt Organization, (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and (1) in the Opinion of Counsel, (y) such corporation shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee corporation shall have been a party, (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (2) in the Opinion of Nationally Recognized Bond Counsel, such merger, consolidation, sale or transfer will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes, (D) unless the Agency shall otherwise consent, has a positive net worth (as determined in accordance with generally accepted accounting principles and certified by an independent certified public accountant reasonably acceptable to the Agency and the Trustee) after the merger, consolidation, sale or transfer of not less than ninety percent (90%) of the net worth that of the Lessee immediately prior to such merger, consolidation, sale or transfer. The Lessee further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any not-for-profit corporation as shall be a Tax-Exempt Organization succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

Section 6.2. Indemnity. (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, the Trustee, the Original Purchaser, the Remarketing Agent, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, Affiliates or affiliate individuals) of any of such Persons and persons under the control or supervision of any of such Persons (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, the "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from October 23, 2001, the date the Agency adopted its original inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(d) hereof), other than, with respect to any 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 marketing, issuance, sale and remarketing of the Bonds for such purpose,

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility, the Condominium or the Common Elements,

(iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility, the Condominium, the Common Elements or any portion of any thereof, or the establishment and operation of the Condominium, compliance with the Condominium Documents, or the payment of all common charges and other costs and expenses arising under the Condominium or under any of the Condominium Documents,

(iv) the execution and delivery by the Indemnified Party, the Lessee or any other Person of, or performance by the Indemnified Party, the Lessee or any other Person, as the case may be, of, any of their respective obligations under, any of the Condominium Documents, this Agreement, the Indenture or any other Security Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby, by the Condominium or the Common Elements,

(v) any injury to any Person or the personal property of any Person in or on the premises of, the Facility, the Condominium or the Common Elements,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including, but not limited to, failure to comply with the requirements of the City's zoning resolution and related regulations.

(vii) any damage or injury to the person or property of (A) the Lessee, (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Lessee, or (C) any other Person who may be in or about the premises of the Facility, the Condominium or the Common Elements,

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined) that are on, from, or affecting the Facility, the Condominium or the Common Elements; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

(ix) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subparagraphs (i) through (viii) of this Section 6.2(a).

Such indemnification set forth above shall be binding upon the Lessee for any and all Claims set forth herein and shall survive the termination of this Agreement.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Lessee or its affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (ix) of Section 6.2(a) hereof, including any Claims or Liability arising from or incurred as a result of the gross negligence or wilful misconduct of such Indemnified Party, or at the direction of the Lessee or any other obligor under any of the Security Documents with respect to any of such matters above referred to. An Indemnified Party 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) (i) In addition to and without being limited by any 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 on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling,

production or disposal of Hazardous Materials, and that, except as set forth in a certain Phase I Environmental Site Assessment, dated October 16, 2001, prepared by Langan Engineering & Environmental Services, P.C., a true and correct copy of which the Lessee has delivered to the Agency (the "Audit"), to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) 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 Legal Requirements, 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 occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(iii) The Lessee shall comply with and ensure compliance by all occupants and users of the Facility with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

(iv) The Lessee shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(v) In the event this Agreement is terminated, the Lessee shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

(vi) 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 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 applicable Legal Requirements pertaining to Hazardous Materials. For purposes of this Section 6.2, the term "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. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

(d) 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 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Paying Agents, Original Purchaser and Agency. The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts: (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (iii) the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including reasonable counsel fees, (iv) the reasonable fees and expenses of the Original Purchaser's counsel in connection with issuance sale and delivery of the Series 2003 Bonds, and (v) the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency, together with any reasonable fees, expenses and disbursements incurred by the Agency's Bond Counsel and General Counsel connection with (i) the Project and any Security Document, including fees and expenses incurred by the Agency after the occurrence and during the continuance of an Event of Default as provided in Section 7.6 hereof; (ii) the negotiation and execution of this Agreement, the Indenture and the other Security Documents; and (iii) any waiver, modification or amendment to this Agreement, the Indenture or any other Security Document that may be requested by the Lessee or any party thereto.

The Lessee further agrees to pay a financing fee to the Agency of \$70,000, less the application fee of \$2,500, plus the Agency counsel fee of \$9,000, which amount will be received by the Agency on the date of issuance of the Series 2003 Bonds, together with (ii) an annual administrative servicing fee to the Agency in the amount of \$500 payable initially on the sale and delivery by the Agency of the Series 2003 Bonds and on every January 1 thereafter until the termination of this Agreement.

The Lessee shall pay all charges, fees, costs and expenses which the Trustee may reasonably pay or incur in connection with (a) the administration, enforcement, defense, or preservation of any rights or security under the Security Documents, (b) the pursuit of any

remedies under the Security Documents or otherwise afforded by law or equity, (c) any amendment, waiver, or other action with respect to or related to the Security Documents whether or not executed or completed, (d) the violation by the Lessee of any law, rule, or regulation or any judgment, order or decree applicable to it, or (e) or any litigation or other dispute in connection with the Security Documents or the transactions contemplated thereby.

The obligations of the Lessee under this Section shall survive discharge and termination of this Agreement.

Section 6.4. Retention of Title to Facility. Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein 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 Trustee and any purported disposition without such consent shall be void.

Section 6.5. Lessee's Covenant as to Tax Exemption. (a) The Lessee covenants with the Agency, with the Trustee and with each of the Holders of the Bonds, that it will comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement, including, without limitation, the making of any payments and filings required thereunder.

(b) The representations, warranties, covenants and statements of expectation of the Lessee set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(c) If any Bondholder receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by the Bondholder at the option of either the Bondholder or the Lessee. In either case all expenses of the appeal including reasonable counsel fees shall be paid by the Lessee, and the Bondholder and the Lessee shall cooperate and consult with each other in all matters pertaining to any such appeal, except that no Bondholder shall be required to disclose or furnish any non-publicly disclosed information, including, without limitation, financial information and tax returns. Before the taking of any appeal, however, the Bondholder shall have the right to require the Lessee to pay the tax assessed and conduct the appeal as a contest for reimbursement.

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

Section 6.6. Financial Statements; No-Default Certificates. (a) The Lessee agrees to furnish to the Trustee, to the Original Purchaser and to the Agency (but only upon written request by the Agency therefore), (i) within thirty (30) days of its availability and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Lessee, a copy of the annual audited consolidated financial statements of the Lessee and its subsidiaries,

including consolidating balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such Fiscal Year, prepared in accordance with generally accepted accounting principles and practices, accompanied by an opinion of an independent certified public accountant, and (ii) within ten (10) days of its availability and in any event within thirty (30) days after the close of each quarter (including the fourth quarter) of each Fiscal Year of the Lessee, a copy of the unaudited consolidated financial statements of the Lessee and its subsidiaries, including consolidating balance sheets as at the end of such quarter of such Fiscal Year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such quarter of such Fiscal Year, prepared in accordance with generally accepted accounting principles and practices.

(b) The Lessee shall deliver to the Trustee and to the Original Purchaser with each delivery of annual financial statements required by Section 6.6(a)(i) hereof, and to the Agency but only upon request therefor by the Agency, (i) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of such preceding Fiscal Year of the Lessee, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, and (ii) a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect. In addition, upon twenty (20) days prior request by the Agency, the Original Purchaser or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency, the Original Purchaser and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(c) The Lessee shall deliver to the Original Purchaser simultaneously with the annual and quarterly financial statements and certificates required in subsections (a) and (b) of this Section 6.6, a certificate evidencing, in reasonable detail, compliance with Section 6.22(e) hereof, including therewith copies of investment account statements, and such further documentation the Original Purchaser may reasonably request.

(d) The Lessee shall immediately notify the Agency, the Original Purchaser and the Trustee 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 Security Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact on the notice.

Section 6.7. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee under this Agreement or the Company Lease other than Liens or Impositions (as defined in Section 4.4 hereof) not yet payable, (x) Permitted Encumbrances, or (y) Liens being contested as permitted by Section 6.7(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may, at its sole expense, contest (after prior written notice to the Agency and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease or the Lease Agreement, of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts payable under this Agreement, (2) neither the Facility nor any part thereof or any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Agency nor the Trustee 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 shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Trustee to protect the security intended to be offered by the Indenture, if applicable.

Section 6.8. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to the terms and provisions of the Indenture and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the 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 6.9. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE

FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.10. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Project Fund or the Renewal Fund upon the expiration or sooner termination of the term of this Agreement as provided in this Agreement, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Bond Registrar, the Paying Agents and the Agency in accordance with the Indenture and after all rents and all other amounts payable hereunder, shall have been paid in full, and after all amounts required to be rebated to the federal government pursuant to the Tax Regulatory Agreement or the Indenture shall have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

Section 6.11. Issuance of Additional Bonds. The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2003 Bonds for the purpose of (i) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (ii) providing extensions, additions or improvements to the Facility, or, subject to the delivery of the Agency to the Trustee of its written authorization, refunding indebtedness incurred to so provide, or (iii) refunding Outstanding Bonds. If the Lessee is not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement, providing, among other things, for the payment by the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

Any such repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under this Agreement and the Company Lease to the same extent as if originally included hereunder and thereunder.

Section 6.12. Employment Information, Opportunities and Guidelines.
(a) Annually, by August 1 of each year, commencing August 1, 2003, until the termination of

this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule B hereto, certified as to accuracy by an Authorized Representative of the Lessee.

(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 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 employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 69 of 1993 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 any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

Section 6.13. Redemption Under Certain Circumstances; Special Covenants.

(a) Upon the determination by resolution of the members of the Agency that the Lessee is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to

be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), the Lessee covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of (y) one hundred percent (100%) of the principal amount of the Bonds to be redeemed (i) if the Bonds are bearing interest at the Weekly Interest Rate, (ii) if the Bonds are bearing interest at the Term Interest Rate and the Bonds are to be redeemed on a Term Rate Adjustment Date, or (iii) if the Bonds are bearing interest at the Term Interest Rate and the remaining number of whole years in the Term Interest Rate Period is not more than three (3) years, and (z) one hundred and three percent (103%) of the principal amount of the Bonds to be redeemed if the Bonds are bearing interest at the Term Interest Rate and the remaining number of whole years in the Term Interest Rate Period is more than three (3) years, together in each case with interest accrued thereon to such Interest Payment Date, provided, however, that if such noncompliance cannot be cured within such period of sixty (60) days with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholders of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

(b) In the event the Lessee fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 4.5 hereof, and the Lessee shall fail to cure such noncompliance within 10 days of the receipt by the Lessee of written notice of such noncompliance from the Agency and a demand by the Agency on the Lessee to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Lessee shall pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem all Bonds then Outstanding at the Redemption Price of (y) one hundred percent (100%) of the principal amount of the Bonds to be redeemed (i) if the Bonds are bearing interest at the Weekly Interest Rate, (ii) if the Bonds are bearing interest at the Term Interest Rate and the Bonds are to be redeemed on a Term Rate Adjustment Date, or (iii) if the Bonds are bearing interest at the Term Interest Rate and the remaining number of whole years in the Term Interest Rate Period is not more than three (3) years, and (z) one hundred and three percent (103%) of the principal amount of the Bonds to be redeemed if the Bonds are bearing interest at the Term Interest Rate and the remaining number of whole years in the Term Interest Rate Period is more than three (3) years, together in each case with interest accrued thereon to the date of redemption.

(c) Upon the circumstances set forth in Section 2.14 of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

(d) (i) If, prior to completion of a component of the Project, the Lessee receives any gift or grant required by the terms thereof to be used to pay any item which is a cost of the Project, the Lessee shall apply such gift or grant to completion of such component of the Project. In the event that the amount of such gift or grant is in excess of the amount necessary to complete such component of the Project, and if proceeds of Bonds have been expended on such component of the Project, the Lessee shall deliver to the Trustee for deposit in the Redemption Account of the Bond Fund an amount of money equal to such gift or grant, but only to the extent to which proceeds of Bonds were expended for such component.

(ii) If, after completion of a component of the Project, the Lessee receives any gift or grant which prior to such completion it reasonably expected to receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, and if proceeds of the Bonds have been expended on such component of the Project, the Lessee shall, to the extent not inconsistent with the terms of such gift or grant, deliver to the Trustee for deposit in the Redemption Account of the Bond Fund an amount of money equal to such gift or grant, but only to the extent to which proceeds of Bonds were expended for such component.

Section 6.14. Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder or under the Indenture.

Section 6.15. Recording and Filing. This Agreement as originally executed or a memorandum thereof shall be recorded by the Lessee subsequent to the recordation of the Indenture, 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. The security interest of the Agency created herein and the assignment of such security interest to the Trustee shall be perfected by the filing of financing statements by the Lessee which fully comply with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the Register of The City of New York. The Lessee shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interest created by this Agreement, to the end that the rights of the Agency, the Holders of the Bonds and the Trustee in the Facility shall be fully preserved as against creditors or purchasers for value from the Agency or the Lessee. The Agency and the Trustee are authorized, if permitted by applicable law, to file one or more Uniform Commercial Code financing statements disclosing any security interest in the Facility, this Agreement and the sums due under this Agreement without the signature of the Lessee or signed by the Agency or the Trustee as attorney-in-fact for the Lessee. The Lessee agrees to perform all acts (including the payment of all costs) necessary in order to enable the Agency to comply with Section 7.08 of the Indenture.

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

Section 6.17. Preservation of Exempt Status. (a) The Lessee represents and warrants that as of the date of issuance of the Series 2003 Bonds: (i) it is an organization described in Section 501(c)(3) of the Code; (ii) it has received a ruling letter or determination from the Internal Revenue Service to that effect; (iii) such letter or determination has not been modified, limited or revoked; (iv) it is in compliance with all terms, conditions and limitations, if any, contained in or forming the basis of such letter or determination; (v) the facts and circumstances which form the basis of such letter or determination continue substantially to exist as represented to the Internal Revenue Service; (vi) it is a "private foundation", as defined in Section 509 of the Code, and that it is in compliance with all terms and conditions contained in the Code required to maintain its status as a "private foundation"; and (vii) it is exempt from federal income taxes under Section 501(a) of the Code and it is in compliance with the provisions of said Code and any applicable regulations thereunder necessary to maintain such status.

(b) The Lessee agrees that (i) it shall not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for its exemption under Section 501 of such Code; (ii) it shall not use more than three percent (3%) of the proceeds of the Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any person or persons who are not governmental units or Section 501(c)(3) organizations; (iii) the Project conforms to the description thereof contained in the Appendices hereto and it shall not directly or indirectly use the proceeds of any Bonds to make or finance loans to persons other than governmental units or Section 501(c)(3) organizations; (iv) it shall not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the date of issue of any Bonds, would cause such Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Agency on such Bonds to be subject to federal income tax in the hands of the Holders thereof; and (v) it shall use its best efforts to maintain the tax-exempt status of any Bonds.

Section 6.18. Securities Law Status. The Lessee affirmatively represents, warrants and covenants that, as of the date of issuance of the Series 2003 Bonds, the Facility shall be operated: (i) exclusively for civic or charitable purposes and (ii) not for pecuniary profit, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The Lessee further affirmatively represents, warrants and covenants that, as of the date of issuance of the Series 2003 Bonds, no part of the net earnings of the Lessee shall inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The Lessee agrees that it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

Section 6.19. Covenants as to Maintenance of Property, Etc. The Lessee hereby covenants:

(a) at all times to cause its business to be carried on and conducted and its property to be maintained, preserved and kept in good repair, working order and condition, ordinary wear and tear excepted, and all needful and proper repairs, renewals and replacements thereof to be made;

(b) to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all applicable laws of the United States and the several states thereof and to duly observe and conform in all material respects to all valid orders, regulations or requirements of any governmental authority relative to the conduct of its business and the ownership of its property;

(c) promptly to pay all lawful taxes, governmental charges and assessments at any time levied or assessed upon or against it or its property;

(d) promptly to pay or otherwise satisfy and discharge all of its obligations and indebtedness and all demands and claims against it as and when the same become due and payable;

(e) to keep its property insured in accordance with prudent insurance practices;

(f) at all times to comply in all material respects with all terms, covenants and provisions of any liens at such time existing upon its property or any part thereof or securing any of its indebtedness;

(g) to procure and maintain all necessary licenses and rights, permits and other governmental approvals, all to the extent that the failure to do so would have a material adverse effect on the financial condition of the Lessee or the ability of the Lessee to perform its obligations under this Agreement and each other Security Document to which the Lessee is a party;

(h) to maintain its status as a Tax-Exempt Organization and to take no action or suffer any action to be taken by others under its control which would result in the interest on any Bond becoming subject to federal income taxes;

(i) in connection with the operation, maintenance, repair and replacement of the Lessee's property, to comply with all applicable Federal, state and local ordinances, laws, rules, regulations and orders; and

(j) to cause its property and facilities to be in compliance in all material respects with all applicable Federal, state and local zoning, subdivision, building, land use, environmental and similar laws and ordinances.

Section 6.20. Obligations under and Covenants with Respect to the Condominium Declaration and Condominium By-laws. The Lessee covenants and agrees that it

shall (i) not enter into, consent, permit or approve an amendment, supplement or modification to the Condominium Declaration or the Condominium By-laws which would (x) adversely affect the Agency or the Trustee, without the prior written consent of the Agency and the Trustee, or (y) adversely affect the security for the Bonds, without the prior written consent of the Trustee, and (ii) pay all costs, fees, charges and expenses required of it or the Agency when due under any of the Condominium Declaration or the Condominium By-laws. The Lessee further covenants to comply with the Condominium Documents together with any and all rules and regulations of the Condominium binding on it or the Agency, including, without limitation, the obligations thereunder to perform construction and obtain all licenses, permits and certifications consistent with the Lessee's use of the Facility in the time period set forth therein.

Section 6.21. [Reserved].

Section 6.22. Negative Covenants. Notwithstanding any other provision of this Agreement, for so long as the Original Purchaser is the owner of the Bonds, the Lessee shall not, without the written consent of the Original Purchaser:

(a) (i) merge or consolidate with any other corporation, association, limited liability company, partnership, trust or other entity, or (ii) sell, lease, transfer or otherwise dispose of all or any substantial part of its assets other than in the ordinary course of business; provided that any action taken pursuant to this Section 6.22(a) shall, in each instance, also satisfy the requirements of Section 6.1 hereof;

(b) make any material change in the nature of its business as conducted at the date hereof;

(c) create, incur, assume, guarantee, endorse, or otherwise become liable for, or permit to exist any indebtedness, except:

(i) obligations with respect to the Bonds under this Agreement; or

(ii) additional indebtedness not exceeding \$3,000,000 in aggregate principal amount outstanding at any time; provided, however, that the Lessee shall provide written notice to the Original Purchaser, not later than ten (10) Business Days prior to the incurrence thereof, of any additional indebtedness in excess of \$500,000 in aggregate principal amount outstanding;

(d) create, incur, assume or suffer to exist any lien with respect to any of its property unless the Lessee shall grant an equal and parity lien, in form and substance reasonably satisfactory to the Original Purchaser, with respect to such property in favor of the Trustee to secure its obligation to make rental payments under this Agreement and the obligation to pay principal of, redemption premium, if applicable, and interest on the Bonds pursuant to the Indenture;

(e) fail to maintain at all times a ratio of (x) unrestricted current assets, including cash and cash equivalents, plus the current value of Unrestricted Investment Assets,

divided by (y) current obligations, including current portion of long-term debt (including debt payable upon demand), of not less than 1.1 to 1.0; or

(f) amend, or consent to, any amendment or supplement to, the certificate of incorporation, bylaws or other organizational document of the Lessee in any manner which would affect the security for the Bonds or the Lessee's compliance with the provisions of this Agreement, provided that the Lessee shall provide to the Original Purchaser, promptly upon its adoption or effectiveness, a copy of any such amendment or supplement with respect to which the Original Purchaser's consent is not required hereunder.

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 any rental that has become due and payable by the terms of Section 3.3 hereof which results in a default in the due and punctual payment of the principal of, redemption premium, if any, or interest on any Bond;

(b) Failure of the Lessee to pay any amount (except as set forth Section 7.1(a) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.4 or 4.5 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(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), (b) or (f) 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, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, provided that, if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, such failure shall not constitute an Event of Default unless (i) 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 or (ii) such failure shall not be cured within one hundred twenty (120) days after receipt by the Lessee of such written notice;

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its assets, (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 against the Lessee shall be entered and continue unstayed and in effect, for a period of sixty (60) days or (iv) the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made (i) by or on behalf of the Lessee in the application, commitment letter and related materials submitted to the Agency or the Original Purchaser of the Series 2003 Bonds for approval of the Project or its financing, or (ii) by the Lessee herein or in any of the other Security Documents or (iii) in the Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee and the Original Purchaser of the Series 2003 Bonds, or (iv) in the Tax Regulatory Agreement, or (v) 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; or

(g) An “Event of Default” under the Indenture or under any other Security Document shall occur and be continuing.

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

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

(b) The Agency, with the prior written consent of the Trustee, or the Trustee, may re-enter and take possession of the Facility without terminating this Agreement, and sublease the Facility for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the sublessee in such subletting, and the rents and other amounts payable by the Lessee hereunder;

(c) The Agency, with the prior written consent of the Trustee, or the Trustee, may terminate this Agreement, and exclude the Lessee from possession of the Facility, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate. No such termination of this Agreement shall relieve the Lessee of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

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

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

(f) The Agency, without the consent of the Trustee or any Bondholder or any other Person but with notice to the Trustee and the Bondholders, may proceed to enforce the Agency's Reserved Rights by (i) bringing an action for damages, injunction or specific performance, and/or (ii) surrendering all of the Agency's right, title and interest in the Facility to the Lessee and the Lessee hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish such surrender.

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

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

Section 7.3. Reletting of Facility. If the right of the Lessee to the occupancy, use and possession of the Facility shall be terminated in any way, the Agency may relet the same or any part thereof for the account and benefit of the Lessee for such rental terms to such Persons and for such period or periods as may be fixed and determined by the Agency after notice to and approval by the Trustee, but the Agency shall not unreasonably refuse to accept or receive any suitable occupant or tenant offered by the Lessee; *provided* that such reletting shall not adversely affect the tax-exempt status of the Bonds or violate the Declaration of Restrictive Covenant. The Agency and the Trustee shall not otherwise be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Lessee, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Lessee, after paying the expenses of reletting and collection, then the Lessee hereby agrees to pay and satisfy any such deficiency if, as and when the same exists; provided, however, any excess rentals from any such reletting shall be credited to any rental due or to become due by the Lessee.

Section 7.4. Remedies Cumulative. The rights and remedies of the Agency or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Agency or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the

future of the right 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, or of the right to recover possession of the Facility by reason thereof.

Section 7.5. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Trustee and the Lessee or any delay or omission on the part of the Agency and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Lessee hereby waives the benefit and advantage of, and covenants not to assert against the Agency or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

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

Section 7.7. Agreement to Pay Attorneys' Fees and Expenses. In the event the Agency, the Trustee or any Bondholder should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Security Document, the Lessee agrees that on and during the occurrence of an Event of Default, it will on demand therefor pay to the Agency, the Trustee or such Bondholder the reasonable fees and disbursements of such attorneys and such other expenses so incurred during the occurrence of such Event of Default.

ARTICLE VIII

Options

Section 8.1. Options. (a) The Lessee has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement.

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

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

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

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

(3) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

(4) one dollar.

(d) Upon such payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption) or termination of this Agreement, the Lessee shall be required to exercise its option above-stated by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option, which notice shall set forth a requested closing date which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date an amount equal to the sum of one dollar, the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and each other Security Document, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

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

Section 8.2. Surrender on Exercise Option to Terminate. At the closing of any surrender of the Agency's leasehold interest in the Facility to the Lessee, the Agency will, upon payment of the sums above stated, deliver or cause to be delivered to the Lessee documents releasing to the Lessee all of the Agency's right, title and interest in the Facility.

Upon such surrender, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 6.2, 6.3, 8.5 and 9.17 hereof, which obligations shall survive such termination.

Section 8.3. Option to Purchase or Invite Tenders of Bonds. The Lessee shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Lessee or by any Affiliate thereof shall be delivered to the Trustee for cancellation within thirty (30) days of the date of purchase (or such later date as, in the Opinion of Bond Counsel delivered to the Trustee, will not cause the interest on the Bonds to become includable in gross income for the purposes of federal income taxation). The Agency shall at all times make available or cause to be made available to the Lessee its registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

Section 8.4. Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 6.2, 8.5 and 9.17 hereof.

Section 8.5. Recapture of Agency Benefits. (a) It is understood and agreed by the parties to this Agreement that the Agency is issuing the Series 2003 Bonds to finance part of the costs of the Project and is entering into this Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) if there shall occur a Recapture Event (as defined below) prior to the completion of the Project and occupancy of the Facility by the Lessee for its intended purposes, the Lessee shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits (as defined below); and

(ii) if there shall occur a Recapture Event after the date on which the Project shall have been completed, which shall be that date as stated in the certificate of the Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof but not later than July 1, 2004 (the "Operations Commencement Date"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

1. one hundred percent (100%) of the Benefits if the Recapture Event occurs within the first six (6) years after the Operations Commencement Date;
2. eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;
3. sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;
4. forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date; and
5. twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

The term "Benefits" shall mean, collectively, all miscellaneous benefits derived from the Agency's participation in the financing of the costs of the Project including, but not limited to, exemption from mortgage recording tax, and filing and recording fees.

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

1. The Lessee shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City);

2. The Lessee shall have leased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;

3. The Lessee shall have effected substantial changes in the scope and nature of the Lessee's operations at the Facility;

4. The Lessee shall have transferred all or substantially all of its employees to a location outside of the City; or

5. The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility other than in compliance with Section 9.3 hereof.

(b) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if (a) the Recapture Event shall have arisen as a direct immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility 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 (b) the Lessee shall have applied, or shall have irrevocably committed to apply, the proceeds of any disposition of the Facility (net of the reasonable costs incurred by the Lessee in connection with such disposition, including any commissions, taxes, filing and recording fees and legal and the professional fees and expenses in connection therewith) to finance a "civic facility" (as defined in the Act), of comparable scope and size as the Facility, in The City of New York within eighteen months of such disposition of the Facility.

(c) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms thereof. 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.

(d) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the then current interest rate imposed by the City's Department of Finance on delinquent payments until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(e) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section 8.5.

ARTICLE IX

Miscellaneous

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

Section 9.2. Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Section 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 settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3. Assignment or Sublease. The Lessee shall not at any time assign or transfer this Agreement, or sublet the whole or any part of the Facility, without the prior written consent of the Agency and the Trustee (which consents may not be unreasonably withheld); provided further, that, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any assignee or transferee of the Lessee in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment

of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee, transferee or sublessee shall utilize the Facility as a qualified "project" and as civic facilities within the meaning of the Act, (5) any assignee, transferee or sublessee shall be a Tax-Exempt Organization (or, if not a Tax-Exempt Organization, the Lessee shall deliver to the Agency and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such assignment, transfer or sublease shall not cause the includability in gross income of interest on the Bonds for purposes of Federal income taxation) and shall utilize the Facility as a qualified "project" within the meaning of the Act, (6) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document, (7) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, (8) each such assignment, transfer or sublease contains such other provisions as the Agency or the Trustee may reasonably require, and (9) in the opinion of Nationally Recognized Bond Counsel, such assignment, transfer or sublease shall not cause the interest on the Bonds to be includable in gross income for federal income tax purposes. The Lessee shall furnish or cause to be furnished to the Agency and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

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

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

The Lessee shall deliver to the Agency on January 1 of each year, commencing on January 1, 2004, a completed subtenant survey in the form attached hereto as Schedule C.

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

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

Section 9.6. Amendments. This Agreement may be amended only with (i) the concurring written consent of the Trustee given in accordance with the provisions of the Indenture, (ii) for so long as the Original Purchaser is the Holder of the Series 2003 Bonds, with the prior written consent of the Original Purchaser, and (iii) only if the Lessee shall assume in writing the obligations of such amended Agreement.

Section 9.7. Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, to New York City Industrial Development Agency, 110 William Street, New York, New York, Attention: Chairman, with a copy to the General Counsel and the Deputy Executive Director of the Agency at the same address, if to the Lessee, to The Isamu Noguchi Foundation, Inc., 32-37 Vernon Boulevard, Long Island City, New York 11106, Attention: Executive Director, if to the Trustee, to Wachovia Bank, National Association, One Penn Plaza, Suite 1414, New York, New York 10119, Attention: Corporate Trust Group, and if to the Original Purchaser, to JP Morgan Chase Bank, c/o JP Morgan Fleming Asset Management, 522 Fifth Avenue, New York, New York 10036, Attention: Robert W. Meiselas. The Agency, the Lessee, the Trustee and the Original Purchaser 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 as of the date it shall have been mailed.

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

Section 9.9. Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

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

Section 9.11. Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12. Binding Effect. This Agreement shall inure to the benefit of the Trustee, the Holders of the Bonds, the Agency and the Lessee, and shall be binding upon the Agency, the Lessee and their respective successors and assigns.

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

Section 9.14. Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State.

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

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

Section 9.16. Investment Tax Credit. It is the intention of the parties that any investment tax credit or comparable credit which may ever be available accrue to the benefit of the Lessee and the Lessee shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code as may be necessary to entitle the Lessee to have such benefit.

Section 9.17. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

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

Section 9.18. Non-Discrimination. (a) At all times during the construction, maintenance and operation of the Facility, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use 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.

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

(c) 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.

(d) 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 9.19. No Recourse under This Agreement or on Bonds. 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 his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing the Bonds.

Section 9.20. 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 date of original issuance and delivery of the Series 2003 Bonds.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, and the Lessee has caused its name to be subscribed hereto by its duly authorized representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By Kei Hayashi
Kei Hayashi
Deputy Executive Director

THE ISAMU NOGUCHI FOUNDATION, INC.

By _____
Name:
Title:

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, and the Lessee has caused its name to be subscribed hereto by its duly authorized representative, all being done as of the year and day first above written.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

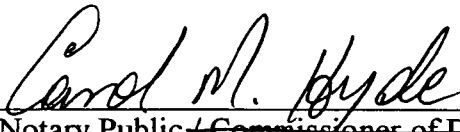
By _____
Kei Hayashi
Deputy Executive Director

THE ISAMU NOGUCHI FOUNDATION, INC.

By Shoji Sadao
Name: Shoji Sadao
Title: Vice President

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

On the 25th day of February, in the year two thousand three, before me, the undersigned, a Notary Public ~~+ Commissioner of Deeds~~ in and for said State ~~+ The City~~ of New York, personally appeared Kei Hayashi, 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 or entity upon behalf of which the individual acted, executed the instrument.



Notary Public ~~+ Commissioner of Deeds~~

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 28, 2007

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

On the 25th day of February, in the year two thousand three, before me the undersigned, a Notary Public in and for said State, personally appeared Shoji Sadao, 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/~~she~~ executed the same in his/~~her~~ capacity, and that by his/~~her~~ signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.



Notary Public

CAROLYN YI
Notary Public, State Of New York
No. 01YI6013752
Qualified In Queens County
Commission Expires Sept. 28, 2006

APPENDICES

DESCRIPTION OF PROJECT

The renovation of a civic facility owned by the Lessee, consisting of the construction of improvements to an approximately 15,000 square foot building located at 32-37 and 32-61 Vernon Boulevard, Long Island City, New York, to provide museum space and space for cultural education programs.

DESCRIPTION OF FACILITY REALTY

AS TO BLOCK 314 LOT 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the First Ward of the Borough of Queens, (Formerly Third or Ravenswood Ward of Long Island City) and designated on a certain map entitled "Partition Map No. 3 of a part of the Estate of Samuel Stevens, deceased, situate in the Third Ward of Ravenswood Ward of Long Island City, Queens Co., N.Y., May 15, 1872" and filed in the Office of the Clerk of the said County of Queens, by the Numbers 235, 236-and 237 and which said lots, taken together, are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southeasterly side of Vernon Boulevard with the northerly side of 33rd Road;

RUNNING THENCE easterly along the northerly side of 33rd Road, 98.35 feet to the easterly line of Lot No. 235 on said map;

THENCE northerly at right angles to the northerly side of 33rd Road and along the easterly line of said last mentioned lot 46.68 feet;

THENCE northwesterly on a line at right angles to the southeasterly side of Vernon Boulevard, 46.68 feet to the southeasterly side of said Vernon Boulevard;

THENCE southwesterly along the southeasterly side of Vernon Boulevard, 98.35 feet to the corner aforesaid, the point or place of **BEGINNING**.

AS TO BLOCK 314 LOTS: 1001 AND 1002

THE Unit known as the Foundation Unit and the Noguchi Office Unit hereinafter called the "Unit") in the Building known as and by the street number 32-37 Vernon Boulevard, Long Island City, in the Borough of Queens, City of New York, County of Queens and State of New York (the "Building"), designated and described as the Foundation Unit in the Declaration establishing a plan for condominium ownership of said Building and the land on which it is erected (hereinafter collectively called the "Property") comprising the 32-37 Vernon Boulevard Condominium, made by Isamu Noguchi under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated March 5, 1984, recorded in the Queens' City Register's Office in the County of Queens, on August 6, 1984, in Reel 1716, at Page 1615 (hereinafter called the "Declaration"), and designated as Tax Lot Nos. 1001 and 1002 in Block No. 314 of the Borough of Queens on the Tax Map of the Borough of Queens, and on the Floor Plans of the Building, issued by Fuller and Sadao P.C. on March 22, 1983 and filed in said Register's Office on August 6, 1984, as Condominium Plan No. 77. The land on which the Building is located is described as follows:

TOGETHER with an undivided 83% and 17% (respectively) interest in the Common Elements of the Property (as defined in the Declaration)

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

BEGINNING at the corner formed by the intersection of the northeasterly side of 33rd Road (formerly Sandford Street) with the northwesterly side of 10th Street (formerly Hancock Street);

RUNNING THENCE northeasterly along the northwesterly side of 10th Street, 243.19 feet to the corner formed by the intersection of the northwesterly side of 10th Street with the southerly side of Vernon Boulevard (formerly Vernon Avenue);

THENCE westerly along the southerly side of Vernon Boulevard, 215.54 feet;

THENCE southerly at right angles to said side of Vernon Boulevard, 46.68 feet;

THENCE southwesterly at right angles to the northeasterly side of 33rd Road, 46.68 feet to the northeasterly side of 33rd Road;

THENCE southeasterly along the northeasterly side of 33rd Road, 100.10 feet to the corner, at the point or place of **BEGINNING**.

SCHEDULE A

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

THE UNDERSIGNED HEREBY CERTIFIES that she/he is an Authorized Representative (as defined in the Lease Agreement referred to below) of The Isamu Noguchi Foundation, Inc., a New York not-for-profit corporation (the "Lessee"), and this certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Lease Agreement, dated as of February 1, 2003 (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):

1. The Project was completed on _____.
2. The Project has been completed substantially in accordance with the plans and specifications therefor and all labor, services, materials and supplies used therefor have been paid for (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
3. All other facilities necessary in connection with the Project have been completed, and all costs and expenses incurred in connection therewith have been paid (except for any costs not exceeding \$100,000 in the aggregate (i) not now due and payable or (ii) the liability for payment of which is being contested or disputed in good faith by the Lessee).
4. The Agency has a good and valid leasehold interest in all property constituting part of the Facility and all property of the Facility is subject to the Company Lease and the Lease Agreement.
5. In accordance with all applicable laws, regulations, ordinances and guidelines, the Facility has been made ready for occupancy, use and operation for its intended purposes.
6. The amount required in my opinion for the payment of any remaining part of the costs of the Project is \$ _____.
7. Attached hereto as Exhibit A is a temporary or permanent certificate of occupancy, if required by applicable law, 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 the Lease Agreement.
8. Attached hereto as Exhibit B are releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project (or, to the extent that any such costs shall be the subject of a bona fide dispute, attached hereto is evidence that such costs have been appropriately

bonded or a copy of a surety or security posted by the Lessee in an amount at least equal to the amount of such costs).

9. Attached hereto as Exhibit C is a certificate of the Board of Fire Underwriters with respect to the Facility.

10. Attached hereto as Exhibit D is evidence that the Facility is not subject to notices of violations filed in the office of any governmental agency.

11. Attached hereto as Exhibit E is evidence of the issuance of all necessary, unconditional and final permits with respect to the Project from all appropriate governmental agencies, and evidence that the Project is in compliance with all applicable building, zoning and other governmental codes and regulations, and that all requisite licenses, permits and approvals that may be required so as to permit the use and operation of the Facility by the Lessee and any uses necessary or incidental thereto.

This certificate (x) is given without prejudice to any rights of the Lessee against third parties which may exist on the date hereof or which may subsequently come into being, and (y) is given only for the purposes of Section 2.2(b) of the Lease Agreement and Section 5.03 of the Indenture. No Person other than the Agency and the Trustee may benefit from this certificate.

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

THE ISAMU NOGUCHI FOUNDATION, INC.

By: _____

Name:

Title:



New York City
Industrial Development Agency

Annual Employment Report

For the year ending June 30, ____

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

<<COMPANY>>
<<ADDRESS>>
<<CITY>>
<<NAME>>

Telephone # _____

Tax ID # _____

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

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

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

Name of Company: _____

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

Signature: _____ Date: _____

If you have any questions, please call the Compliance Helpline at (212) 312-3968.

Please fax or mail this form to:

(212) 312-3918
New York City Industrial Development Agency
110 William Street, New York, NY 10038
Attention: Compliance Unit, 4th Floor

ida	New York City Industrial Development Agency	IDA SUBTENANT SURVEY DUE DATE: December 30, ____
«COMPANY» «ADDRESS» «CITY» «NAME»		

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

Total Square Footage of Building(s) _____ **Sq. Ft.**

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

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

Name: _____ Title: _____

Signature: _____ Date: _____

Phone Number: _____

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

HelpLine: 212-312-3963

110 William Street, New York, NY 10038 • 212.619.5000

PLEASE FAX YOUR RESPONSE TO 212-312-3918