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**NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY**

and

**JETBLUE AIRWAYS CORPORATION**

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**LEASE AGREEMENT**

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Dated as of November 1, 2010

JetBlue Airways Corporation Project

**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, New York 10166  
File No. 90570.158

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement"), made and entered into as of November 1, 2010, by and among **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, party of the first part (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, and **JETBLUE AIRWAYS CORPORATION**, a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office at 118-29 Queens Boulevard, Forest Hills, Long Island City, New York 11375 (the "Company") (all capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Project Agreement, dated as of the date hereof between the parties hereto (the "Project Agreement")):

### WITNESSETH:

**WHEREAS**, the Agency was established by the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended and Chapter 1082 of the Laws of 1974 of the State of New York, as amended (the "Act") for the benefit of The City of New York and the inhabitants thereof; and

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company to induce the Company and/or Eligible Affiliates to undertake leasehold improvements with respect to and to acquire and install certain building materials, constituting Facility Improvement Materials in those certain premises leased by the Company and described in Appendix A hereto constituting the Project Premises (Facility Improvements), all for use by the Company and/or Eligible Affiliates in the Company Business; and

**WHEREAS**, in connection with the improvement of the Project Premises (Facility Improvements), the Agency intends to grant the Company financial assistance in the form of New York State and Local Sales and Use Tax exemptions as and to the extent provided in the Project Documents; and

**WHEREAS**, Agency financial assistance and related Agency benefits are necessary to provide employment in, and are beneficial for the economy of, The City of New York and are reasonably necessary to induce the Company to proceed with the Project; and

**WHEREAS**, as part of the financial assistance to be given to the Company and Eligible Affiliates, the Agency has issued its Sales Tax Letter to be utilized by the Company in connection with the Facility Improvement Project; and

**WHEREAS**, the Company desires to commence with the improvement and renovation of the Project Premises (Facility Improvements); and

**WHEREAS**, the Company has a valid leasehold interest in the Project Premises (Facility Improvements); and

**WHEREAS**, in order to permit the Company to claim New York State and Local Sales and Use Tax exemptions under the Sales Tax Letter with respect to leasehold improvements undertaken at the Project Premises (Facility Improvements) and the purchase of Facility Improvement Materials which are to be incorporated into the Project Premises (Facility Improvements), the Company has leased and/or

subleased the Project Premises (Facility Improvements) to the Agency in accordance with the Act and the Prime Sublease and pursuant to the terms of the Company Lease; and

**WHEREAS**, the Agency now wishes to sublease the Project Premises (Facility Improvements) to the Company on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS AND REPRESENTATIONS

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

Company shall mean, collectively, JetBlue Airways Corporation, a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to Section 4.1 of the Project Agreement (including any surviving, resulting or transferee corporation or other legal entity as provided in such Section 4.1) and each Eligible Affiliate designated from time to time by the Company.

Landlord shall mean, with respect to the premises located at 27-01 Queens Plaza North, Long Island City, New York 11101, Brause Plaza North LLC, and its successors and assigns under the Prime Lease (Queens Plaza North).

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

Permitted Encumbrances shall mean, as of any particular time:

- (i) the Prime Lease, the Prime Sublease, the Company Lease and this Agreement;
- (ii) liens for real estate taxes, payments in lieu of taxes, assessments, levies and other governmental charges and impositions, and any liens for water and sewer rents and taxes, each to the extent not yet due and payable;
- (iii) utility access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not interfere with or impair the use of the Project Premises (Facility Improvements) as contemplated by the parties hereto;

(iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project Premises (Facility Improvements) and as do not, either singly or in the aggregate, materially impair the use of the property affected thereby for the purpose for which it was acquired and held by the Company under this Agreement;

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

(vi) all title exceptions to which the Project Premises (Facility Improvements) are subject;

(vii) any mechanic's lien imposed on the Project Premises (Facility Improvements) which arises from work performed for the Landlord or for any tenant other than the Company, or any judgment lien imposed on the Project Premises (Facility Improvements) which arises from a judgment against the Landlord or against any tenant of the Project Premises (Facility Improvements) other than the Company, or any lien of any nature whatsoever which is imposed on the Project Premises (Facility Improvements) and which is not the responsibility of the Company to remove, bond or dispose of; and

(viii) with respect to each of the Project Premises (Facility Improvements) leased by the Company, any and all encumbrances to which the Prime Lease or the Prime Sublease is or hereafter shall be subordinate.

Permitted Users shall include any vendors or concession operators supplying services for Principal Use by the Company.

Prime Lease shall mean with respect to the premises located at 27-01 Queens Plaza North, Long Island City, New York, that certain Agreement of Lease, dated May 10, 2001, between the Landlord and the Company, as amended.

Prime Sublease shall mean with respect to the premises located at 27-01 Queens Plaza North, Long Island City, New York, that certain agreement of sublease, dated September \_\_, 2010, between the Sub-Landlord and the Company, as amended.

Project Premises shall mean, collectively, the Project Premises (Facility Improvements), Project Premises (Facility Equipment) and Leased Personalty.

Sub-Landlord shall mean with respect to the premises located at 27-01 Queens Plaza North, Long Island City, New York 11101, Metropolitan Life Insurance Company, and its successors and assigns under the Prime Sublease.

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), 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 representations and warranties of the Agency set forth in Section 2.2 of the Project Agreement are incorporated by reference in this Agreement, with the same force and effect as if each and every provisions thereof were set forth at length herein.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the subleasing of the Project Premises (Facility Improvements) by the Agency to the Company pursuant to the terms hereof, in order to enable the Company to obtain exemptions from New York State and Local Sales and Use Tax Exemptions under the Sales Tax Letter for the undertaking of leasehold improvements to and the purchase of Facility Improvement Materials with respect to the Project Premises (Facility Improvements) is reasonably necessary to induce the Company to proceed with the Project.

Section 1.5 Representations and Warranties by the Company. The representations and warranties of the Company set forth in Section 2.1 of the Project Agreement are incorporated by reference in this Agreement, with the same force and effect as if each and every provisions thereof were set forth at length herein.

In addition to the foregoing, the Company makes the following representations and warranties as of the date hereof:

(i) The assistance provided by the Agency to the Company pursuant to the terms of the Project Documents are reasonably necessary to induce the Company to proceed with the Project which Project was induced on May 10, 2010.

(ii) The Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Company or any Eligible Affiliate from a location outside of the City but in the State to within the City, or in the abandonment of one or more of such plants or facilities of the Company or any Eligible Affiliate located outside of the City but in the State.

(iii) No portion of the Project Premises (Facility Improvements) is or will be primarily used in making retail sales to customers who personally visit the Project Premises (Facility Improvements) unless such use will not result in a violation of the Agency Requirements (and no sales or use tax exemption has been or will be made available therefor under the Sales Tax Letter). For purposes of this representation, retail sales shall mean: (i) sales by a registered

vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

(iv) The Company was considering relocating and expanding certain of its operations to locations outside of the City, with the resultant loss of employment in the City; and the availability of Agency financing assistance and related Agency benefits for the Project was critical in narrowing the cost gap between remaining and expanding in the City and relocating outside of the City, thereby making it possible for the Company to decide to retain and increase its employees and related operations within the City and to proceed with the Project.

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

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

(vii) Except as otherwise provided in the Project Documents, no Person other than the Company and/or the Eligible Affiliates and/or Permitted Users will be in occupancy or possession of any portion of the Project Premises (Facility Improvements).

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

(ix) The design of the Facility Improvement Project and the operation of the Project Property (Facility Improvements) will comply in all material respects with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(x) The Company intends to operate the Project Property (Facility Improvements) or cause the Project Property (Facility Improvements) to be operated in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(xi) The execution, delivery and performance of this Agreement and of the Company Lease Agreement by the Company does not constitute a breach, default or violation of the terms of the Prime Sublease by the Company, except that the execution and delivery of this Agreement and the Company Lease Agreement require the consent of the Landlord and the Sub-Landlord which consents have been obtained prior to the date hereof.



(xii) The total rentable square footage of the Project Premises (Facility Improvements) is approximately 225,000.

## ARTICLE II THE PROJECT

Section 2.1 The Project. (a) The Company and/or Eligible Affiliates will, on behalf of the Agency, and from time to time and in the ordinary course of its business, proceed with the making of Facility Improvements to the Project Premises (Facility Improvements), all to be effected in accordance with this Agreement, the Project Agreement and the Sales Tax Letter. All contractors, materialmen, vendors, suppliers and other Persons furnishing labor, services or materials for or in connection with the Facility Improvements shall be selected by the Company or a representative thereof in the name of the Agency.

(b) The Company shall be responsible for the payment of (i) all of the costs and expenses in connection with the preparation of the Sales Tax Letter, the Company Lease and this Agreement and the other Project Documents, (ii) as between the Agency and the Company, all taxes and charges, if any, payable in connection with the leasehold conveyance effected pursuant to the Company Lease or attributable to periods prior to the term of the Company Lease, and this Agreement, and (iii) all shipping and delivery charges and all other reasonable expenses or claims incurred by or on behalf of the Company in connection with the Facility Improvements.

(c) At the request of the Agency to the Company, the Company shall provide such additional information and clarifications concerning any portion of the Facility Improvements effected hereunder by the Company as shall be reasonably requested by the Agency.

(d) With respect to each of the Project Premises (Facility Improvements), the Company will obtain or cause to be obtained all necessary approvals, permits, authorizations and licenses (to the extent that the Landlord or the Sub-Landlord, with respect to such Project Premises (Facility Improvements), does not have exclusive standing to obtain same or to cause same to be obtained) from any and all governmental agencies and appropriate authorities requisite to the effectuation by the Company of the Facility Improvements and the operation and use of the Project Premises (Facility Improvements) and shall furnish copies of the same to the Agency promptly upon receipt thereof, all of which will be done in compliance in all material respects with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance required to be maintained hereunder with respect to the Project Premises (Facility Improvements).

(e) The Company shall take such action and institute such proceedings, and enforce such warranties, as shall be reasonably necessary to cause all contractors and material suppliers to complete their contracts in accordance with the terms of said contracts (subject to the independent right of the Company, in the exercise of its good faith business judgment, to waive or modify performance in whole or in part by any such contractor or supplier). The Agency will cooperate in any such action or proceeding, at the Company's sole cost and expense, provided that the Agency shall not be required to take any action it does not deem to be reasonable. Any amounts recovered by way of damages, credits, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, shall be paid to the Company.

(f) Title to (or a leasehold or licensee's interest in) all materials and other property intended to be incorporated or installed as Facility Improvements and as part of the Project Premises

(Facility Improvements) shall vest in the Agency upon the date set forth in the applicable purchase documents. The Company shall take all action reasonably necessary to protect such title of the Agency in the Facility Improvements against claims of any third parties.

Section 2.2 Commitment to Project. The Company will, from time to time and in the ordinary course of its business, proceed with the making of Facility Improvements at the Project Premises (Facility Improvements), and such work will be effected in a first-class workmanlike manner, all on behalf of and as agent for the Agency, and all in accordance with the Sales Tax Letter, this Agreement, the Equipment Lease Agreement and the Project Agreement. The Company shall not be entitled to any reimbursement for the Facility Improvements from the Agency nor shall the Company be entitled to any diminution of the payments to be made under this Agreement or any other Project Document.

Section 2.3 No Title Assurance by Agency. The Agency makes no representation or warranty that the Agency has been vested with a valid leasehold or subleasehold interest in the Project Premises (Facility Improvements) for purposes of this Agreement or any other Project Document, nor shall the Agency have any liability (pecuniary or otherwise) by reason of any such failure of interest.

### ARTICLE III LEASE OF PROJECT PREMISES (FACILITY IMPROVEMENTS)

Section 3.1 Lease of Project Premises (Facility Improvements). The Agency hereby leases to the Company and the Company hereby leases from the Agency the Project Premises (Facility Improvements), all for and during the term herein provided and upon and subject to the terms and conditions herein set forth subject however, without modifying the obligations of the Company hereunder, to the terms, conditions and limitations set forth in the Prime Sublease. The Company shall, subject to the provisions of this Agreement, at all times during the term of this Agreement use and operate the Project Premises (Facility Improvements) as a qualified "project" in accordance with the provisions of the Act and for the operation of the Company Business as specified in the recitals to this Agreement. The Company shall not use or operate the Project Premises (Facility Improvements) or allow the Project Premises (Facility Improvements) or any part thereof to be used or operated for any unlawful purpose or in a manner which may constitute a nuisance, public or private, or make void or voidable any insurance required hereunder then in force with respect thereto.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Lease Commencement Date and shall expire on the earliest of (i) June 30, 2023, or (ii) such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Company, and the Company accepts, such possession of the Project Premises (Facility Improvements) as the Agency has or may have therein.

#### Section 3.3 Rental Provisions.

(a) Base Rent. The Company shall pay Base Rent to the Agency, without demand or notice on the Lease Commencement Date in the amount of \$10.00, which shall constitute the entire amount of Base Rent payable hereunder, the receipt of which by the Agency is hereby acknowledged.

(b) Additional Rent. Throughout the term of this Agreement, the Company shall pay to the Agency any additional amounts required to be paid by the Company to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

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

Section 3.4 Obligation of the Company Unconditional. The obligation of the Company to pay the amounts due pursuant to Sections 3.3, 7.2 and 8.1 hereof, and the obligation of the Company to pay all other payments provided for in this Agreement and to maintain the Project Premises (Facility Improvements) in accordance with Section 4.1 of this Agreement 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 or any other Person whatsoever. For so long as this Agreement remains in effect, the Company 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 Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or assign any obligation of the Company under this Agreement, except as provided in this Agreement, or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

#### ARTICLE IV MAINTENANCE, TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Facility Improvements. (a) During the term of this Agreement, the Company will keep or cause the Sub-Landlord to keep in accordance with the Prime Sublease, the Project Premises (Facility Improvements) in good and safe operating order and condition, ordinary wear and tear excepted, and subject to Section 9.2(b) will occupy the Project Premises (Facility Improvements) in the manner for which they were designed and intended and will make or cause the Sub-Landlord to make in accordance with the Prime Sublease all replacements, and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to permit the continuity of the operation of the Company Business by the Company and/or Eligible Affiliates at the Project Premises (Facility Improvements). All replacements and repairs effected by the Company shall be made and installed at the Project Property (Facility Improvements) in a good and workmanlike manner, and be made or installed in compliance with the requirements of all governmental bodies and the Company shall use reasonable efforts to cause all replacements and repairs by the applicable Landlord to be so performed. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Property (Facility Improvements), to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Property (Facility Improvements), or to furnish any utilities or services for the Project Property (Facility Improvements) and the Company hereby agrees to assume full responsibility therefor. Provided there are Unrealized Sales Tax Savings, the Company shall be permitted to utilize the Sales Tax Letter to effect the replacement or renewal of any inadequate, obsolete, damaged, worn-out or unsuitable parts of the Project Property (Facility Improvements).

(b) The Company shall have the right to make such alterations of, replacements of, repairs to and/or additions to the Project Property (Facility Improvements) or any part thereof from time to time as it may determine to be desirable, provided that (i) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in material compliance with all applicable legal requirements, (ii) subject to subsection (d) of this Section 4.1, such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Property (Facility Improvements) shall at all times be free of any mortgage, lien,

charge, encumbrance, security interest or claim other than Permitted Encumbrances, subject to any good faith disputes as the Company may have and prosecute with diligence with respect thereto, and (iii) such additions or alterations do not change the nature of the Project Property (Facility Improvements) so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Project Property (Facility Improvements) shall constitute a part of the Project Property (Facility Improvements), subject to this Agreement and the Project Documents. Provided there are Unrealized Sales Tax Savings, the Company shall be permitted to utilize the Sales Tax Letter to effect the replacement or renewal of any inadequate, obsolete, damaged, worn-out or unsuitable parts of the Project Property (Facility Improvements).

(c) Subject to paragraph (d) below and Section 6.5 hereof, the Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Premises (Facility Improvements) or any part thereof, or the interest of the Company in the Project Premises (Facility Improvements), this Agreement or the Company Lease except for Permitted Encumbrances.

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

(e) The Company shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed at the Project Premises (Facility Improvements) tenant improvement work and all furnishings and other personal property (the "Company Property") with respect to which no sales or use tax exemption shall have been received pursuant to the Sales Tax Letter or otherwise constituting the Project Property (Facility Improvements) or Facility Equipment without conveying title to or any leasehold interest in such property to the Agency nor subjecting such property to this Agreement. The Agency shall not be responsible for any loss of or damage to the Company Property. The Company shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company Property.

Section 4.2 Reserved.

Section 4.3 Taxes, Assessments and Charges. (a) Subject to paragraph (b) below (and, if applicable, subject to the terms of the Prime Sublease), the Company shall pay or cause to be paid, when the same shall become due and payable, all taxes, assessments, governmental charges and impositions, general and specific, whether foreseen or unforeseen, ordinary or extraordinary, under any present or future law, which may be levied and assessed upon or against the estate or interest of the Agency or the Company in the Project Premises (Facility Improvements) or other amounts payable hereunder during the term of this Agreement.

(b) The Agency shall have no responsibility for the payment of any Imposition (as defined below). Notwithstanding any provision hereof to the contrary, the Company shall pay or cause to be paid, when the same shall become due and payable any and all Impositions to the extent that payment of such is an obligation of the Company under the Prime Sublease.

For purposes of this Section 4.3 the term "Imposition" shall mean all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project Premises (Facility Improvements), and all water and sewer charges, special district charges, assessments, Business Improvement District charges 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 Project Property (Facility Improvements). The term Impositions shall not include New York State and Local Sales and Use taxes to the extent exemptions from such taxes are claimed in accordance with the Sales Tax Letter.

(c) In addition, in the event the Project Premises (Facility Improvements) or any portion thereof is exempt from Impositions (other than Sales and Use Taxes, or real property taxes in substitution for which the Company or the Landlord shall be obligated to make payments in lieu of taxes as described above) solely due to the Agency's interest in the Project Premises (Facility Improvements), the Company shall (subject to paragraph (b) above,) promptly pay or cause to be paid all such Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Company or otherwise if the Agency had no such interest in the Project Premises (Facility Improvements).

(d) The Company may at its sole cost and expense and in good faith commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any Imposition (upon prior written notice to the Agency) provided, that, (i) if the Company withholds payment, such proceeding shall suspend the execution or enforcement of any Lien arising from the non-payment of such Imposition against the Project Premises (Facility Improvements) or any part thereof or any interest therein or in this Agreement or the Company Lease of the Agency or against any of the rentals or other amounts payable under this Agreement or the Company Lease or the Project Agreement, (ii) neither the Project Premises (Facility Improvements) nor any material portion thereof or interest therein would be in reasonably imminent danger of being sold, forfeited or lost, and (iii) neither the Company nor the Agency would be in reasonable danger of any criminal liability for failure to pay such Imposition.

(e) In addition, in the event the Project Premises (Facility Improvements) or any portion thereof would qualify for an exemption from Impositions but for the Agency's interest therein, the Agency shall reasonably cooperate with the Company at the sole cost and expense of the Company, in order to permit the Company to receive such exemption; provided, that, no such cooperation shall result in (i) an increase of the obligations of the Agency or reduce the rights of the Agency hereunder or (ii) a decrease of the obligations of the Company hereunder or increase of the rights or benefits of the Company under the Project Documents.

#### Section 4.4 Insurance.

(a) Definitions. For purposes of this Section 4.4, the following terms shall have the meanings specified below:

**Certificate** means an ACORD (or comparable insurance broker issued) certificate evidencing insurance.

**CGL** means commercial general liability insurance.

**Contractor(s)** means, individually or collectively, a contractor or subcontractor providing materials and/or labor and/or other services in connection with any Construction, but not including a GC, CM or any architect or engineer providing professional services.

**CM** means a construction manager providing construction management services in connection with any Construction.

**Construction** means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Project Premises, including the Project Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement or the Ground Lease in connection with the Project Premises, provided, that, one or both of the following conditions applies to the foregoing: (i) the cost thereof, labor and materials combined, is \$500,000 or greater, or (ii) the work being performed, whether in whole or in part, is roof work or exterior work that is performed at a height of more than eight (8) feet above the ground.

**GC** means any general contractor providing general contracting services in connection with any Construction.

**Insured** means the Company.

**Insurer** means the lead insurance carrier issuing a Policy.

**ISO** means the Insurance Services Office or its successor.

**ISO Form CG-0001** means the CGL form published by ISO at the Commencement Date.

**Policy(ies)** means, collectively or individually, the policies required to be obtained and maintained pursuant to Section 4.4(b) and (c).

**SIR** means self-insured retention.

**U/E** means Umbrella or Excess Liability insurance.

**Workers' Compensation** means Workers' Compensation, disability and employer liability insurance.

(b) **Required Insurance.** Throughout the term of this Agreement, except during periods of Construction, the Insured shall obtain and maintain for itself as a primary insured the following insurance:

(i) CGL with \$10,000,000 minimum per occurrence; \$25,000,000 minimum in the aggregate; and per-location aggregate. This Policy shall contain coverage for contractual liability, premises operations, and products and completed operations.

(ii) U/E with \$4,000,000 minimum per occurrence on terms consistent with CGL. The excess coverage provided under U/E shall be incremental to the CGL to achieve minimum required coverage of \$5,000,000 per occurrence; such incremental coverage must also apply to auto liability (see Section 4.4(b)(iii)), whether auto liability coverage is provided by endorsement to the Insured's CGL or by a stand-alone policy.

(iii) Auto liability insurance with \$1,000,000 combined single limit and at least the minimum coverage required by the State for uninsured or under-insured vehicles. If the Insured does not own any vehicles, the Insured shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Coverage should be at least as broad as ISO Form CA0001, ed. 10/01.

(iv) Workers Compensation satisfying State statutory limits. Coverage for employer liability shall be in respect of any work or operations in, on or about the Project Premises.

(c) Required Insurance During Periods of Construction. In connection with any Construction and throughout any period of such Construction, the Company shall cause the following insurance requirements to be satisfied:

(i) The Insured shall obtain and maintain for itself Policies in accordance with all requirements set forth in Section 4.4(b), except that CGL and U/E shall be in an aggregate minimum amount of \$10,000,000 per project aggregate.

(ii) Any GC or CM shall obtain and maintain for itself as a primary insured the following Policies:

(A) CGL and U/E in accordance with the requirements in Section 4.4(b), subject to the following modifications: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional three (3) years after completion of the Construction;

(B) Auto liability insurance in accordance with the requirements in Section 4.4(b); and

(C) Workers' Compensation in accordance with the requirements in Section 4.4(b).

(iii) Each Contractor shall obtain and maintain for itself as a primary insured the following insurance:

(A) CGL and U/E in accordance with the requirements in Section 4.4(b) except that, in addition, completed operations coverage shall extend (or be extended) for an additional three (3) years after completion of the Construction;

(B) Auto liability insurance in accordance with the requirements in Section 4.4(b); and

(C) Workers' Compensation in accordance with the requirements in Section 4.4(b).

(d) Required Policy Attributes. Except as the Agency shall expressly otherwise agree in writing in their sole and absolute discretion:

(i) The Company shall cause each Policy (other than Worker's Compensation insurance) to name the Agency as additional insured on a primary and non-contributory basis as more particularly required in Section 4.4(f)(i).

- (ii) No Policy shall have a deductible.
- (iii) CGL shall not be subject to SIR.
- (iv) CGL shall be written on either ISO Form CG-0001 or on such other form that the Company may request provided that any requested substitute shall provide an additional insured with substantially equivalent coverage to that enjoyed by an additional insured in a policy written on ISO Form CG-0001 and provided further that the substitute is reasonably approved by the Agency. If the Insured intends to renew its CGL on a form that is not either an ISO Form CG0001 or a substitute form that has been previously approved by the Agency, the Insured shall endeavor to provide the Agency with evidence of the equivalent coverages prior to the intended date on which the renewal Policy is to be effective.
- (v) Reserved.
- (vi) Without limiting Section 4.4(d)(v) or the application of any other requirement under this Section 4.4, no Policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:
  - (A) contractual liability coverage insuring the contractual obligations of the Insured;
  - (B) the right of the Insured to name additional insureds including the Agency;
  - (C) the applicability of CGL coverage to the Agency as additional insured in respect of liability arising out of any of the following claims: (x) claims against the Agency by employees of the Insured, or (y) claims against the Agency by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Agency arising out of any work performed by a GC, CM, Contractor, architect or engineer.
- (vii) U/E shall follow the form of CGL except that U/E may be broader.
- (viii) Each Policy shall provide primary insurance and the issuing Insurer shall not have a right of contribution from any other insurance policy insuring the Agency.
- (ix) In each Policy, the Insurer shall waive, as against any Person insured under such Policy including any additional insured, the following: (x) any right of subrogation, (y) any right to set-off or counterclaim against liability incurred by a primary insured or any additional insured, and (z) any other deduction, whether by attachment or otherwise, in respect of any liability incurred by any primary insured or additional insured.
- (x) Policies shall not be cancellable without at least thirty (30) days' prior written notice to the Agency as additional insured.
- (xi) Each Policy under which the Agency is an additional insured shall provide that the Agency will not be liable for any insurance premium, commission or assessment under or in connection with any Policy.



(e) Required Insurer Attributes. All Policies must be issued by Insurers satisfying the following requirements:

(i) Insurer shall have a minimum AM Best rating of A minus.

(ii) Insurer must be an authorized insurer in accordance with Section 107(a) of the New York State Insurance Law.

(iii) Insurer must be admitted in the State; provided, however, that if the Insured requests the Agency to accept a non-admitted Insurer, and if the Agency reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Agency shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an "admitted" Insurer means that the Insurer's rates and forms have been approved by the State Insurance Department and that the Insurer's obligations are entitled to be insured by the State's insurance guaranty fund.

(f) Required Evidence of Compliance. The Company shall deliver or cause to be delivered, throughout the term of this Agreement, evidence of all Policies required hereunder as set forth in this Section 4.4(f):

(i) All Policies. With respect to all Policies on which the Insured is to be a primary insured, the Insured shall deliver to the Agency a Certificate or Certificates evidencing all Policies required by this Section 4.4, (x) at the Commencement Date, (y) prior to the expiration or sooner termination of Policies, and (z) prior to the commencement of any Construction. If the Certificate in question evidences CGL, such Certificate shall name the Agency as additional insured in the following manner:

*New York City Industrial Development Agency is additional insured on a primary and non-contributory basis. The referenced policy covers the [Project Premises];*

For purposes of the foregoing, the phrase "at appropriate times" shall mean: (i) at the Commencement Date; and (ii) prior to the expiration or sooner termination of Policies; and (iii) prior to the commencement of any Construction.

(ii) CGL. With respect to CGL on which the Insured is to be a primary insured, the Insured shall additionally deliver to the Agency the following:

(A) Prior to the Commencement Date the Insured shall deliver to the Agency a Certificate or Certificates evidencing the required CGL coverages.

(B) Upon the expiration or sooner termination of any CGL, the Insured shall deliver to the Agency a Certificate or Certificates evidencing the new or replacement CGL.

(C) Prior to the commencement of any Construction, the Insured shall deliver to the Agency a Certificate or Certificates evidencing the CGL under which the Insured is to be the primary insured during the period of such Construction.

(iii) Insurance to be obtained by GCs and CMs. Prior to the commencement of any Construction that entails the services of a GC or CM, the Company shall provide to the Agency,

in a form satisfactory to the Agency, evidence that the GC or CM (as the case may be) has obtained the Policies that it is required to obtain and maintain in accordance with Section 4.4(c).

(iv) Insurance to be obtained by Contractors. In connection with any Construction, the Company shall, upon the written request of the Agency, cause any or all Contractors to provide evidence satisfactory to the Agency, that such Contractors have obtained and maintain the Policies that they are required to obtain and maintain in accordance with the requirements of Section 4.4(c).

(g) Notice. The Company shall immediately give the Agency notice of each occurrence that is reasonably probable to give rise to a claim under the insurance required to be maintained by this Section 4.4 that is in excess of \$250,000. Notwithstanding the foregoing, the Company shall not be required to give the Agency notice of any Workers Compensation claims.

(h) Miscellaneous.

(i) If, in accordance with the terms and conditions of this Section 4.4, an Insured is required to obtain the consent of the Agency, the Company shall request such consent in a writing provided to the Agency at least thirty (30) days in advance of the commencement of the effective period (or other event) to which the consent pertains.

(ii) Throughout the term of this Agreement, the delivery by the Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless otherwise stated by the Company to the contrary, constitute a representation and warranty from the Insured to the Agency that the Insured does not own vehicles.

(iii) The Insured shall neither do nor omit to do any act, nor shall it suffer any act to be done, whereby any Policy would or might be terminated, suspended or impaired.

(iv) If, throughout the term of this Agreement, insurance industry standards applicable to properties similar to the Project Premises and/or operations similar to the operations of the Company, materially change; and if, as a consequence of such change, the requirements set forth in this Section 4.4 become inadequate in the reasonable judgment of the Agency for the purpose of protecting the Agency against third-party claims, then the Agency shall have the right to supplement and/or otherwise modify such requirements, provided, however, that such supplements or modifications shall be commercially reasonable.

(v) THE ISSUER AND THE TRUSTEE DO NOT REPRESENT THAT THE INSURANCE REQUIRED IN THIS SECTION 4.4, WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE INSURED AND ITS OPERATIONS AGAINST CLAIMS AND LIABILITY.

(vi) The Agency, in its sole discretion and without obtaining the consent of the Trustee or any Guarantor or any other party to the transactions contemplated by this Agreement, may make exceptions to the requirements under this Section 4.4 by a written instrument executed by the Agency. In the event the Company shall request the Agency to make any exception to the requirements under this Section 4.4, the Agency shall not unreasonably withhold its consent. The Company acknowledges that the Agency's decision in this respect will be deemed reasonable if made in furtherance of protecting the Agency from liability.

Section 4.5 Advances by Agency. In the event that the Company fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first providing the Company with ten (10) days prior written notice (except in the event of an emergency condition which in the reasonable judgment of the Agency necessitates immediate action) 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 under this Agreement make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become additional obligations of the Company to the Agency, which amounts, together with interest thereon at the rate of eighteen per cent (18%) per annum from the date advanced, the Company will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.6 Compliance with Law. (a) The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, and subject to the provisions of Section 4.6(b) below, use and operate the Project Premises (Facility Improvements) in compliance (or promptly use good faith diligent efforts to cause all of their subtenants, users and operators to use and operate the Project Premises (Facility Improvements) in compliance with all Legal Requirements. Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Landlord (or the Sub-Landlord) with any Legal Requirement: (i) if the Sub-Landlord is required, under the terms of the Prime Lease (or if the Sub-Landlord is required, under the terms of the Prime Sublease) to comply with such Legal Requirements, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (ii) if such non-compliance is the result of any action or failure to act on the part of the Landlord (which action or failure to act is not a breach of any obligation of the Landlord to the Company under the Prime Sublease) or of any tenant or occupant (other than the Company or any Eligible Affiliate thereof or a tenant, directly or indirectly, of the Company or any Eligible Affiliate thereof) in any portion of the Project Premises or of any agent, contractor, officer, director, employee or servant of the Landlord or of any such tenant.

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

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

(d) The provisions of this Section 4.6 are for the sole benefit of the Agency and the Company, and no other Person whatsoever shall be or be deemed to be a third party beneficiary thereof or hereof.

**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 Project Premises (Facility Improvements) shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Landlord and those authorized to exercise such right, or if the temporary use of the Project Premises (Facility Improvements) shall be so taken by condemnation or agreement (a "Loss Event"), the Agency shall have no obligation to rebuild, replace, repair or restore the Project Premises (Facility Improvements), and the Company shall promptly give notice of such Loss Event to the Agency, generally describing the nature and extent thereof (except in any instance where the cost to repair or restore what was damaged or destroyed, or where the value of what was taken or condemned, is less than \$300,000, in which case no notice shall be required).

(b) If (i) any of the respective Project Premises (Facility Improvements) are damaged, rendered inaccessible, acquired or condemned as a result of a Loss Event such that (1) such Project Premises (Facility Improvements) are untenable, (2) the Landlord or the Sub-Landlord does not restore such Project Premises (Facility Improvements) during the time frame required under the Prime Lease or the Prime Sublease, as applicable, or (3) the Sub-Landlord or the Company terminates the Prime Sublease if, (ii) in excess of fifty percent (50%) of the Project Premises (Facility Improvements) is damaged, destroyed, acquired or condemned as a result of a Loss Event and the Sub-Landlord or the Company terminate the Prime Sublease in accordance with the terms thereof, or if (iii) a Loss Event shall occur such that any of the respective Project Premises (Facility Improvements) shall be acquired or condemned, then, in any of such events, within sixty (60) days thereof, the Company shall deliver written notice of the same to the Agency, which notice shall acknowledge the termination of the same, in which case, the Project Premises (Facility Improvements) shall be released from this Agreement and the Company Lease. Notwithstanding the foregoing, if the Company or the Landlord or the Sub-Landlord (as applicable) shall determine, following a casualty or condemnation, to continue occupancy of the undamaged or uncondemned portion of the Project Premises (Facility Improvements), and abandon the damaged or condemned portion of the Project Premises (Facility Improvements), then the Company shall so notify the Agency promptly upon the making of such determination, and, provided that this Agreement shall not have been terminated by reason of the occurrence and continuance of an Event of Default hereunder, the abandoned portion of the Project Premises (Facility Improvements) shall be released from this Agreement and the Company Lease but the remainder shall continue to be leased or subleased (as the case may be) under this Agreement and the Company Lease.

The Company shall advise the Agency in writing of the action to be taken by the Company with respect to rebuilding or continued occupancy after casualty under this Section 5.1(b) at the same time the Company is required to provide notice of the same to the Landlord or the Sub-Landlord (as applicable) in accordance with the Prime Sublease.

(c) Any rebuilding, replacements, repairs or restorations of the Project Premises (Facility Improvements) by the Company (or the Landlord or the Sub-Landlord, as the case may be) following a Loss Event shall:

(i) automatically be deemed a part of the Project Premises (Facility Improvements) and leased to the Agency (and to the extent such rebuilding, replacement, repair or restoration shall be with respect to Facility Improvements, shall be owned by the Agency), and be subject to this Agreement and the Company Lease,

during the period commencing on the Indemnification Commencement Date, and continuing throughout the term of this Agreement, arising upon, about, or in any way connected with the Project Premises, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Project Premises or the Project,
- (ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Project Premises, or any defects (whether latent or patent) in the Project Premises,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project Premises or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Company or any other Person of, or performance by an Indemnified Party, the Company or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project 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,
- (v) any damage or injury to the person or property of any Person in or on the premises of the Project Premises,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or
- (vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Project Premises; 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, which are based upon or in any way related to such Hazardous Materials.

(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Company or its Affiliates for, any Claim 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 Section 6.2(a), or at the direction of the Company with respect to any of such matters above referred to, provided, however, that such release shall not apply with respect to any Claim or Liability arising from or incurred as a result of the gross negligence or willful misconduct or unlawful acts or omissions of any Indemnified Party.

(c) An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2.

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

(iii) if and to the extent being affected by the Company, 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 in accordance with the terms of the applicable contract(s) therefor, and

(iv) Provided there are Unrealized Sales Tax Savings, may be effected utilizing the Sales Tax Letter.

(d) The Agency and the Company 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, but the settlement, compromising, arbitration or adjustment of any such claim or demand shall be in the sole discretion of the Company. The Agency shall cooperate with the Company, at the sole cost and expense of the Company, in the settlement, compromise, arbitration or adjustment of any such claim and shall execute documents as shall be reasonably necessary to accomplish the same.

(e) Subject to Section 5.1(g), the Company shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed by the Company on or about the Project Premises (Facility Improvements) but which, at the time of such damage or taking, is not part of the Project Premises (Facility Improvements) and is owned by the Company.

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

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

## ARTICLE VI PARTICULAR COVENANTS

Section 6.1 Reserved.

Section 6.2 Indemnity.

(a) The Company shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant, agent (excluding for this purpose the Company, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "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 or unlawful acts or omissions of any Indemnified Party), arising

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Company 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 Agency. The Company shall pay the reasonable out of pocket fees and costs and expenses (including legal, accounting and other administrative expenses) of the Agency, to the extent the same constitute Extraordinary Costs of Administration together with any reasonable fees and disbursements incurred by the Agency's Project Counsel in performing services for the Agency in connection with this Agreement and the Project Documents.

Section 6.4 Retention of Interest in Project Premises (Facility Improvements). Except for a transfer or conveyance of the Project Premises (Facility Improvements) to the Company pursuant to the provisions of the Project Documents, the Agency shall not sell, encumber (other than Permitted Encumbrances), assign or convey its interest in the Project Premises (Facility Improvements) or any part thereof or interest therein during the term of this Agreement without the prior written consent of the Company and the Landlord or the Sub-Landlord, if necessary, and any purported disposition without such consent shall be void.

Section 6.5 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 Project Premises (Facility Improvements) or any part thereof or the interest therein of the Agency or the Company or against the interest of the Company under this Agreement or the Company Lease other than (w) Liens granted by the Company in Facility Improvements or Facility Equipment to secure the financing or re-financing of the costs thereof, (x) Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, (y) Permitted Encumbrances, or (z) Liens being contested as permitted by Section 6.5(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge or bonding 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 Project Premises (Facility Improvements) or the amounts payable under this Agreement.

(b) The Company may at its sole cost and expense contest, by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Project Premises (Facility Improvements) or any part thereof or interest therein, or in this Agreement, or in any of the amounts payable under this Agreement, (2) neither the Project Premises (Facility Improvements) nor any interest therein would be in any reasonable danger of being sold, forfeited or lost, and (3) neither the Company nor the Agency, would likely be exposed to any criminal liability for failure to comply therewith.

(c) At the written request of the Agency, the Company shall provide to the Agency all reasonable information as may be requested with respect to any Lien (as described in Section 6.5(a)

hereof), the status thereof, the amount in dispute, and the action taken or proposed to be taken by the Company in connection therewith.

Section 6.6 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, and that, subject to Permitted Encumbrances (and any other title matters), so long as the Company shall duly observe all covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Company shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Project Premises (Facility Improvements) without molestation by or from the Agency or any Person claiming through the Agency.

Section 6.7 Further Assurances. The Company and the Agency will each do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Company, as the Agency or the Company deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and the Company Lease.

Section 6.8 No Warranty of Condition or Suitability. THE AGENCY HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS), ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT PROPERTY (FACILITY IMPROVEMENTS), OR THE SUITABILITY OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) FOR THE PURPOSES OR NEEDS OF THE COMPANY OR ANY OTHER PERSON. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) NOR THE COMPANY'S NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY SHALL ASSERT NO CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) IS NOT SUITABLE OR FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROJECT PROPERTY (FACILITY IMPROVEMENTS) OR THE USE OR MAINTENANCE OF ANY THEREOF OR THE FAILURE OF OPERATION OF ANY THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT OF ANY 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 OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS CAUSED THEREBY.

Section 6.9 Right to Cure Agency Defaults. The Agency hereby grants the Company full authority for the account of the Agency after first providing the Agency with ten (10) days prior written notice of such non-performance (unless the Company shall reasonably determine that, due to exigent circumstances, such notice shall not be practical, in which case advance notice shall not be required) to perform any covenant or obligation the non-performance of which is alleged to constitute a default, in the name and stead of the Agency, with full power of substitution.

Section 6.10 Enforcement of Rights Under Prime Sublease Against Sub-Landlord. The Company covenants and agrees that to the extent that the Sub-Landlord is obligated to the Company under the Prime Sublease to comply (or to cause tenants to comply) with all Legal Requirements (the foregoing covenants of the Sub-Landlord being the "Sub-Landlord Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Sub-Landlord



Covenants, and upon the direction of the Agency, the Company shall promptly exercise reasonable good faith diligent efforts to enforce the Sub-Landlord Covenants against the Sub-Landlord.

Section 6.11 Covenants with Respect to the Prime Sublease. (a) The Company covenants and agrees that it shall not enter into an amendment, supplement or modification to the Prime Sublease which would adversely affect the interests of the Agency (or otherwise amend, supplement, modify or waive any of the Sub-Landlord Covenants, as defined in Section 6.10 hereof which would adversely affect the interests of the Agency). Promptly following the execution thereof, the Company shall furnish copies of any amendment, supplement or modification to the applicable Prime Sublease to the Agency.

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

Section 6.12 Release of Portions of the Project Premises (Facility Improvements). Upon at least ten (10) days prior written notice by the Company to the Agency, the Company shall have the right, exercised in good faith, to cause the release from this Agreement and from the Company Lease, of any portion of the Project Premises (Facility Improvements), provided, that, no such release shall diminish or impair the obligations of the Company under this Agreement (including, without limitation, the indemnifications, releases and hold harmless provisions contained in Sections 4.6 and 6.2 hereof), the obligations of the Company under Section 5.12 of the Project Agreement or the obligations of the Company under the Company Lease.

Section 6.13 Additional Project Premises (Facility Improvements).

(a) The Company shall further have the right, from time to time, to lease or license to the Agency pursuant to the Company Lease additional premises demised under the Prime Sublease (the "Additional Project Premises") to be made subject to this Agreement and the Company Lease, on the condition, however, that:

(i) at least ten (10) days prior to the date upon which the Company wants to add the Additional Premises, the Company shall have delivered to the Agency a certificate of an Authorized Representative of the Company stating the intention of the Company to effect such letting or licensing, and certifying (A) as to the Additional Project Premises (Facility Improvements) to be leased, subleased, licensed or sublicensed to the Agency and the proposed date of such letting or licensing which date shall be a Business Day (the "Additional Project Premises (Facility Improvements) Closing Date"); (B) as to the aggregate rentable square feet which such Additional Project Premises (Facility Improvements) comprises or such other description of the space reasonably satisfactory to the Agency; (C) as to the aggregate rentable square feet of Project Premises (Facility Improvements) and any and all other space which the Agency would lease or license (as the case may be) after such letting and/or licensing; (D) as to a description of any Person (other than the Company or any Eligible Affiliate) as shall be occupying or using any portion of such Additional Project Premises (Facility Improvements) (accompanied by a true and complete copy of the lease or other use or occupancy agreement with such Person), the use by such Person of such space, that the Agency is not a landlord to such Person whether as a matter of agreement with such Person or by law, and the Agency has and shall have no landlord obligations or liabilities owing to such Person, that no such use is for a retail purpose, the rentable square feet occupied by each such Person, the aggregate amount of rentable square feet or such other description of the space reasonably satisfactory to the Agency of the Project Premises (Facility Improvements) after the letting of the Additional Project

Premises (Facility Improvements) to the Agency as would be occupied by each Person, and the percentage of aggregate rentable square feet as would comprise the Project Premises (Facility Improvements) after such letting which would be used or occupied by all Persons other than the Company or Eligible Affiliates; (E) that other than that portion of the Additional Project Premises (Facility Improvements), stated to be used or occupied by Persons other than the Company or Eligible Affiliates, the space comprising the Additional Project Premises (Facility Improvements) will either remain vacant or be occupied and used by the Company and/or other Eligible Affiliates in the Company Business; and (F) that no "event of default" exists under the Prime Sublease and no Event of Default exists under this Agreement, nor does an event exist which upon notice or lapse of time or both would constitute such an Event of Default; and

(ii) on the Additional Project Premises (Facility Improvements) Closing Date, the Agency shall, in its reasonable discretion, amend the Company Lease to add to the description of premises a leasehold or license interest in the Additional Project Premises (Facility Improvements) from the Company or any assignee of the Company under the Prime Sublease pursuant to the Company Lease and the Agency shall receive:

(A) a "Phase I Environmental Audit" or a "transaction screen" with respect to the Additional Project Premises (Facility Improvements), if reasonably required by the Agency and such requirement is customary at the time of such additional leasing or licensing, reasonably satisfactory in form and substance to the Agency, by an environmental engineer who is reasonably acceptable to the Agency;

(B) an endorsement to the public liability and other insurance referred to in Section 4.4 hereof including such Additional Project Premises (Facility Improvements) within the property covered by such insurance; and

(C) a certificate of an Authorized Representative of the Company or any assignee of the Company under the Prime Sublease certifying, as of the Additional Project Premises (Facility Improvements) Closing Date, as true and correct the matters set forth in Section 6.13(i) above;

then, on the Additional Project Premises (Facility Improvements) Closing Date, provided no "event of default" shall exist under the Prime Sublease and no Event of Default shall exist under this Agreement, or an event which upon notice or lapse of time or both would become such an Event of Default, the Agency shall accept a leasehold interest in the Additional Project Premises (Facility Improvements), and shall enter into an amendment to this Agreement and to the Company Lease to reflect the inclusion of the Additional Project Premises (Facility Improvements) in the Project Premises (Facility Improvements) leased under this Agreement, the Prime Sublease and the Company Lease.

Section 6.14 Company to Remain Tenant Under Prime Sublease. In the event that the Company shall at any time or for any reason sell assign its interest in the Prime Lease to an Eligible Affiliate, the Company shall also assign their interest in this Agreement and in the Company Lease to such Eligible Affiliate and cause such Eligible Affiliate to assume in writing all of the obligations of the Company contained in this Agreement and the Company Lease jointly and severally with the Company and deliver to the Agency an opinion of counsel to the Company to the effect that such assignee or transferee shall be bound jointly and severally with the Company by all of the terms applicable to the Company under this Agreement, and the Company Lease.

Section 6.15 Limitation of Tax Exemptions. Neither the Company nor any Eligible Affiliate thereof shall claim any tax exemptions under the Sales Tax Letter for any improvements or renovations other than with respect to the Project Premises (Facility Improvements).

## ARTICLE VII EVENTS OF DEFAULT; REMEDIES

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

(a) Failure of the Company to pay any rent under Section 3.3 of this Agreement and continuance of such failure for a period of ten (10) days after receipt by the Company of notice thereof from the Agency;

(b) Failure of the Company to pay any amount (except the obligation of the Company to pay rent under Section 3.3 of this Agreement) that has become due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4, 4.5, 6.3, 6.10 or 9.2 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of notice specifying the nature of such default from the Agency;

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

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

(e) A proceeding or case shall be commenced against the Company, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of one hundred twenty (120) days; or the Company shall acquiesce in writing to any of the foregoing; or any order for relief against the Company shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 4.1 of the Project Agreement;

(f) Any material representation or warranty made (i) by the Company in the application and related materials submitted to the Agency for approval of the Project or in any Project Documents, (ii) by the Company herein or in the Project Agreement, (iii) by the Company in any report, certificate, financial statement, summary of financial statements or other instrument furnished pursuant hereto, or (iv) by or on behalf of the Company in any Required Disclosure Statement or any of the foregoing shall have been relied upon by the Agency and prove to be false, misleading or incorrect in any material respect as of the date made, or (y) if the same shall be capable of being cured, and shall not in fact be cured within thirty (30) days after the Company has knowledge, or receives notice, of the false, misleading or incorrect representation or warranty, or if such false, misleading or incorrect representation or warranty can reasonably be remedied over a reasonable period of time, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after having such knowledge or receiving said, or (z) shall not have been made in good faith;

(g) An "Event of Default" under the Project Agreement, or any other Project Document shall occur and be continuing beyond any grace or cure period thereunder; or

(h) The abandonment by the Company of all or substantially all of the Project Premises (Facility Improvements).

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

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Company shall cease and terminate (except for the Company's rights under Section 8.1 hereof), and convey all of the Agency's right, title and interest in the Project Property (Facility Improvements) to the Company, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Company, a termination hereof, and the Company hereby waives delivery and acceptance of such termination as a condition to its validity and 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 the foregoing; or

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

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

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

Notwithstanding any other provision of this Agreement, no remedy of specific performance or injunction, stay or restraining order or other equitable remedy may be sought or obtained by the Agency to (y) prevent or delay or impede in any manner (1) any assignment by the Company of its interest in the Project Property (Facility Improvements), (2) any merger or corporate restructuring undertaken by the Company, (3) any reduction or relocation of employees or the Designated Operations and Facilities of the Company, (4) any proposed subletting of the Project Premises (Facility Improvements) consistent with Section 9.2 hereof, or (z) compel the use by the Company of the Project Property (Facility

Improvements) or any portion thereof as a qualified "project" under the Act, and the Agency hereby absolutely and irrevocably waives any right to such remedy and any right to seek or obtain any such remedy. The foregoing shall not limit the Agency's rights to enforce recapture of Benefits, to cause forfeiture of Benefits, to terminate any Project Document or to enforce any monetary obligation of the Company hereunder or under the Project Documents.

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

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company 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 (subject to and in accordance with the limitations contained in Section 7.2 above) or strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

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

Section 7.5 Effect of Discontinuance of Proceeding. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Agency, then, and in every such case after giving effect to any such adverse ruling, the Agency shall, at no cost to the Company, be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default hereunder shall occur and the Agency should employ outside attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

## ARTICLE VIII OPTIONS; TERMINATION ON EXERCISE OF OPTION

Section 8.1 Options. (a) The Company shall have the option to terminate the Agency's leasehold interest in the Project Premises (Facility Improvements) and to terminate this Agreement on any date during the term hereof by paying all amounts due under the Project Agreement and all rental payments due hereunder. The Company shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Company to the Agency stating that the Company has

elected to exercise its option under this Section 8.1(a) and the date on which such exercise and termination is to be made. In addition, the Company shall terminate the Agency's leasehold interest in the Project Premises (Facility Improvements) on the scheduled expiration date of this Agreement by paying on such date any and all amounts due under the Project Agreement and any and all rental payments then due hereunder.

(b) The Company shall not, at any time, assign or transfer its option under this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.2 hereof without the prior written consent of the Agency.

Section 8.2 Termination on Exercise of Option. At the closing of any termination of the Agency's interest in the Project Premises (Facility Improvements) pursuant to Section 8.1 hereof, the Agency will, upon payment of any and all amounts due under the Project Agreement and any and all rental payments then due hereunder, deliver or cause to be delivered to the Company, at the sole cost and expense of the Company, (a) documents (the form of which may be provided by the Company so long as the Agency shall make no covenants or warranties thereunder nor have any liability by reason of such documents) terminating the Agency's right, title and interest in the Project Premises (Facility Improvements), and (b) documents releasing and conveying to the Company all of the Agency's rights and interests in and to any rights of action, or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards with respect to the Project Premises (Facility Improvements).

## ARTICLE IX MISCELLANEOUS

Section 9.1 Force Majeure. In case by reason of Force Majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Company to make any payments hereunder, or to comply with Sections 6.2 or 6.10 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.

The Company shall promptly notify the Agency upon the occurrence of each Force Majeure affecting the Company, describing such Force Majeure and its effects in reasonable detail. The Company shall also promptly notify the Agency upon the termination of each such Force Majeure occurrence. The

information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any Force Majeure and any of the contentions contained in any such notice received from the Company.

Section 9.2 Assignment or Sublease. (a) The Company shall not at any time (i) assign or transfer this Agreement or (ii) sublease, any portion of the Project Premises (Facility Improvements), without the prior written consent of the Agency (which consent shall be in the sole discretion of the Agency); provided, that with respect to any such assignment, transfer or sublease, (1) the Company 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 Project Document to which it shall be a party, (2) any assignee or transferee of the Company shall have executed and delivered to the Agency an instrument, in form for recording, in and by which the assignee or transferee shall have assumed in writing and agreed to keep and perform all of the terms of this Agreement (and of each other Project Document to which the Company shall be a party) on the part of the Company to be kept and performed, shall be jointly and severally liable with the Company for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment or transfer shall not cause the obligations of the Company and all of the terms, covenants and conditions of this Agreement, or of any other Project Document to which the Company shall be a party, to cease to be legal, valid and enforceable against the Company, (4) any assignee or transferee shall utilize the Project Property (Facility Improvements) as a qualified "project" as defined in the Act, (5) such assignment or transfer shall not violate any provision of this Agreement, or any other Project Document, (6) such assignment or transfer shall in no way diminish or impair the Company's obligation to carry the insurance required under Section 4.4 of this Agreement and the Company shall furnish written evidence reasonably satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment or transfer, and (7) each such assignment or transfer contains such other provisions as the Agency may reasonably require (which the Agency shall provide within 15 days after request by the Company). The Company shall furnish or cause to be furnished to the Agency a copy of any such assignment or transfer in substantially final form at least ten (10) days prior to the date of execution thereof.

(b) Subject to the prior written consent of the Agency (which consent shall be in the sole discretion of the Agency), the Company may without any change or reduction in the benefits afforded herein, sublet fifteen-percent (15%) of the Project Premises (Facility Improvements) to one or more Non-Qualified Users, provided in each case that (1) such sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency in its sole discretion, (2) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party, (3) any sublessee shall utilize the Facility Realty as a qualified "project" as defined in the Act, and (4) prior to the entering into of such sublease, the Company shall have delivered to the Agency:

(A) a copy of the proposed sublease indicating the proposed term, all renewal options, and the amount of rentable square feet to be sublet,

(B) the identity of the proposed subtenant and the identity of its principal officers, and, if not a publicly traded corporation, the identity of its principal stockholders, and the proposed use of the space to be sublet,

(C) the precise location of the space to be sublet, and

(D) evidence reasonably satisfactory to the Agency that such sublease will

not diminish or impair the obligation of the Company to carry the insurance required under Section 4.4 hereof, and that such insurance coverage shall in no manner be limited by such sublease.

(c) In the event the Agency shall reasonably request additional information with respect to the proposed sublease or subtenant, the Company shall deliver such information to the Agency promptly after such request. Whether or not any conditions set forth above shall be satisfied, the Company may, in accordance with Section 6.12 hereof, cause such proposed sublet space to be excluded from the Project Premises (Facility Improvements) (1) leased by the Company to the Agency pursuant to the Company Lease, and (2) by the Agency to the Company pursuant to this Agreement.

(d) Any consent by the Agency to any act of assignment, transfer or sublease with respect to this Agreement shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease with respect to this Agreement or as modifying or limiting the rights of the Agency or the obligations of the Company under this Section 9.2.

(e) The Company shall have the right to request that the Agency confirm in writing to the Company whether any Required Disclosure Statement delivered to the Agency by or on behalf of any proposed assignee or transferee of this Agreement or proposed sublessee of the Facility Realty is in a form satisfactory to the Agency acting in its sole discretion, or whether any assignment, transfer or sublease would cause the Facility Realty to no longer be a qualified "project" under the Act. Within ten (10) Business Days after the Agency receives any such written request of the Company (which request shall include pertinent information relating to the proposed assignee, sublessee or transferee), or if the Agency shall reasonably request further information of the Company, then within ten (10) Business days after the receipt by the Agency of the additional information so requested, the Agency shall confirm to the Company (in writing) whether or not the Required Disclosure Statement delivered to the Agency by or on behalf of the proposed assignee, transferee or sublessee is in a form acceptable to the Agency acting in its sole discretion or whether the assignment, transfer, or sublease would cause the Facility Realty to cease to be a qualified "project" under the Act. The Agency agrees that if it does not, within the aforementioned time periods, deliver notice to the Company stating whether or not the Required Disclosure Statement delivered to the Agency by or on behalf of the proposed such assignee, transferee or sublessee is in a form acceptable to the Agency acting in its sole discretion, the Company shall be entitled to assume that the Required Disclosure Statement is in acceptable form, and that the assignment or sublease would not cause the Facility Realty to cease to be a qualified "project" under the Act. The Company shall be entitled to conclusively rely on such confirmation (or waiver) in connection with any assignment, transfer or sublease.

Section 9.3 Amendments. This Agreement may be amended only in a written instrument executed by the Agency and the Company.

Section 9.4 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, or by hand, addressed, if to the Agency, to the General Counsel, New York City Industrial Development Agency, 110 William Street, New York, New York 10038, with a copy to the Executive Director of the Agency at the same address, and if to the Company, JetBlue Airways Corporation (until the Company takes occupancy of the Project Premises, at the address first above written, and thereafter at), 118-29 Queens Boulevard, Forest Hills, New York 11375, Attention: Joanna Geraghty, with copies of any default notices to the Company's counsel, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attention: Ross Moskowitz, Esq. The Agency and the Company may, by like notice, designate any further or



different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed, or if delivered, on the date actually received or the date on which receipt is refused (as indicated on the return receipt).

Section 9.5 Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Project Premises (Facility Improvements), other than the other Project Documents.

Section 9.6 Severability. If any clause, provision or section of this Agreement were 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 9.7 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 9.8 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Company and their respective successors and assigns.

Section 9.9 Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.10 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 Project Property (Facility Improvements) or any matters whatsoever arising out of or in any way connected with this Agreement. This Section 9.10 shall survive the termination or expiration of this Agreement.

Section 9.11 No Recourse under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity. In addition in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State 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, and any such obligation shall be payable solely out of the amounts payable by the Company under this Agreement. All covenants, stipulations, promises, agreements and obligations of the Company contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any director, officer, employee or agent of the Company in their individual capacity and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Company or any natural person executing this Agreement on behalf of the Company.

Section 9.12 Subordination. With respect to the Project Premises (Facility Improvements) leased by the Company, this Agreement is and shall be subject and subordinate in all respects to the Prime Lease, the Prime Sublease and to all the matters to which each of the Prime Lease and the Prime Sublease is subject and subordinate.

Section 9.13 Inspection of Project Property (Facility Improvements). The Company will permit the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice and in compliance with standard security procedures of the Company in connection with inspections to enter upon the Project Premises (Facility Improvements) to examine and inspect the Project Property (Facility Improvements) and exercise its rights hereunder and under the other Project Documents with respect to the Project Property (Facility Improvements). The Company will further permit the Agency, or its duly authorized agents, at all reasonable times upon reasonable notice and in compliance with standard security procedures of the Company in connection with inspections to enter upon the Project Premises (Facility Improvements) but solely for the purpose of assuring that the Company is operating the Project Property (Facility Improvements), or is causing the Project Property (Facility Improvements) to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Project Property (Facility Improvements) as such latter obligation is and shall remain solely the obligation of the Company.

Section 9.14 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. The date of this Agreement is November 1, 2010.

Section 9.15 Investment Tax Credit. It is the intention of the parties that as between the Agency and the Company, (a) the Company shall be entitled to all depreciation deductions with respect to the Project Premises (Facility Improvements) under Section 167 or 168 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Project Premises (Facility Improvements) and any comparable state and local income tax benefits (whether now existing or hereafter enacted or adopted); and (b) without limiting the generality of the foregoing, any investment tax credit or comparable credit which may ever be available shall accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Company to have such benefit. The Agency makes no representation or warranty whatsoever, however, that any such tax benefits would be available to either the Agency or the Company.

[Signature Page Follows]

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Maureen Babis  
Executive Director

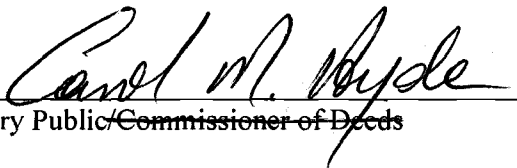
**JETBLUE AIRWAYS CORPORATION**

By: \_\_\_\_\_

Joanna L. Geraghty  
Executive Vice President and  
Chief People Officer

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

On the 16<sup>th</sup> day of November in the year 2010, before me, the undersigned personally appeared Maureen Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public/Commissioner of Deeds

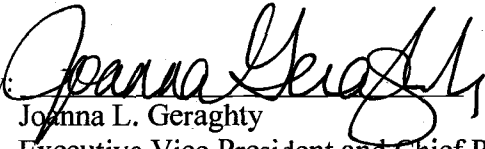
**CAROL M. HYDE**  
Notary Public, State of New York  
No. 4977270  
Qualified in Queens County  
Commission Expires Jan. 28, 2011

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

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

**JETBLUE AIRWAYS CORPORATION**

By:   
Joanna L. Geraghty  
Executive Vice President and Chief People  
Officer

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

On the 12<sup>th</sup> day of November in the year 2010, before me, the undersigned, personally appeared Joanna L. Geraghty, 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/they executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

*Gioia Gentile*  
Notary Public

**GIOIA GENTILE**  
Notary Public, State of New York  
No. 01GE6202837  
Qualified in New York County  
Commission Expires 03/23/2013

**APPENDIX A**

**DESCRIPTION OF PROJECT PREMISES  
(FACILITY IMPROVEMENTS)**

The Project Premises (Facility Improvements) shall, collectively, mean the Project Premises (Facility Improvements) described below.

Street Address	Block/Lot	Floors	Approximate square feet
27-01 Queens Plaza North Long Island City, New York	Block 416, Lots 10 and 21	2, 5 6 and 7 and storage space in the lower level basement	225,000