

# Lease Agreement

EXECUTION COPY

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**NEW YORK CITY  
INDUSTRIAL DEVELOPMENT AGENCY**

AND

**NORD CON REALTY, LLC**

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**LEASE AGREEMENT**

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Dated as of December 1, 2000

**\$2,070,000**  
New York City Industrial Development Agency  
Industrial Development Revenue Bonds  
(Just Bagels Manufacturing, Inc. Project)  
\$985,000 Series 2000A and \$1,085,000 Series 2000B

Affecting the land generally known by the street address 517-529 Casanova Street, Bronx, N.Y., Bronx County, City and State of New York and which is also known as Section 10, Block 2768, Lot 159 on the Official Tax Map of Bronx County, all as more particularly described in Appendix A to this Lease Agreement.

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Record and Return To:  
WINSTON & STRAWN

200 Park Avenue  
New York, New York 10166  
Attention: William F. Dudine, Esq.

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, made and entered into as of December 1, 2000, by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, and **NORD CON REALTY, LLC**, a New York limited liability company qualified to do business under and by virtue of the laws of the State of New York, ~~having its principal office at 527 Casanova Street, Bronx, New York 10474 (the "Lessee")~~, party of the second part:

### WITNESSETH:

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

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

**WHEREAS**, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and with Just Bagels Manufacturing, Inc., a corporation organized and existing under the laws of the State of New York and affiliated with the Lessee (the "Sublessee") for (a) the acquisition of certain premises located at 517-529 Casanova Street, Bronx, New York 10474 (the "Facility Realty"), and (b) the improving, equipping, renovating and reconstructing an approximately 17,500 square foot manufacturing facility located thereon, all for the use in the manufacture of fresh and frozen bagels and bagel related products (the "Project") (said manufacturing facility, together with the Facility Realty, the "Facility"), and in furtherance of said purpose, on December 12, 2000, the Agency adopted a resolution (the "Authorizing Resolution") authorizing the Project, and undertaking to permit the issuance of its industrial development revenue bonds to finance such Project and thereupon to lease the Facility to the Lessee for sublease to Sublessee; and

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

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project and for incidental and related costs thereto, will issue and sell its \$2,070,000 aggregate principal amount of Industrial Development Revenue Bonds (Just Bagels Manufacturing, Inc. Project) Series 2000 (the "Series 2000 Bonds") consisting of two series of the bonds, the Series 2000A Bonds in the principal amount of \$985,000 and the Series 2000B Bonds in the principal amount of \$1,085,000, pursuant to the Act, an inducement resolution of the Agency adopted on November 14, 2000, a bond resolution of the Agency adopted on December 12, 2000, and an Indenture of Trust of even date herewith by and between the Agency and First Union National Bank, as Trustee, securing said Bonds and any Additional Bonds (as hereinafter defined) issued thereunder; and

WHEREAS, Rochester Fund Municipals shall be the initial purchaser of the Series 2000 Bonds and, subject to its rights hereunder to transfer the Series 2000 Bonds, shall constitute the Initial Bondholder (the "Initial Bondholder") herein; and

WHEREAS, concurrently with the execution hereof, (i) the Agency, the Lessee and the Sublessee will grant a mortgage liens on and a security interests in the Facility to the Trustee for the benefit of the Initial Bondholder; (ii) the payment of the principal of, redemption premium, if applicable, and interest on the Series 2000 Bonds, and the payments, obligations, covenants and agreements of the Lessee under this Lease Agreement, will be guaranteed by the Lessee and the Sublessee (the "Corporate Guarantors") and by Charles E. Contreras, Clifford R. Nordquist and James O'Connell (the "Individual Guarantors") (the Corporate Guarantors and Individual Guarantors, collectively, the "Guarantors"), all pursuant to a guaranty agreement with the Trustee dated as of December 1, 2000 (the "Guaranty Agreement"); and

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

## ARTICLE I. Definitions and Representations

Section 1.1. **Definitions.** Terms not otherwise defined herein shall have the same meanings as used in the Indenture or the Tax Certificate herein below defined. The following terms shall have the following meanings in this Lease Agreement:

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

Agency Mortgage shall mean that Agency Mortgage and Security Agreement (Building Loan) in the amount of \$2,070,000 from the Lessee, the Sublessee and the Agency to the Trustee (and its successors and assigns) dated the date hereof constituting a first mortgage lien on the Facility and securing those Bond proceeds allocated to the construction cost of the Facility and shall include any and all amendments or supplements thereto hereafter made in conformity herewith and with the Indenture.

Agreement shall mean this Lease Agreement dated as of December 1, 2000 between the Agency and the Lessee, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs of the Agency, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, any member of the Lessee, (iii) in the case of the Sublessee, the President, Chairman, any Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary, and (iv) in the case of the Individual Guarantor, such Individual Guarantor or his/her duly authorized attorney-in-fact.

Bonds shall mean the Series 2000 Bonds and any Additional Bonds.

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

Eligible Materials shall mean construction materials and tangible personal property to be used by the Lessee to make capital improvements on the Facility Realty.

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

Facility shall mean, collectively, the Facility Realty, all buildings, structures and improvements now or hereafter located thereon (including, without limitation, the approximately 17,500 square foot building located thereon), and any Facility Equipment.

Facility Equipment shall mean all fixtures, machinery, equipment, chattels and articles of personal property and all appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the Improvements located thereon or placed on any part thereof, though not attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and all other property used in connection with the production of income from the Land and/or the Improvements located thereon or adapted for use



therein, including, without limitation, any machinery, equipment and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto but excluding Lessee's Property within the meaning of Section 4.1(c) hereof and all machinery, equipment and other personal property installed by the Lessee prior to the date hereof or Existing Facility Property released pursuant to Section 4.2 hereof. Notwithstanding the foregoing, Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 hereof, include all property substituted for or replacing items of Facility Equipment (as provided for in this Agreement and the Agency Mortgage) and exclude all items of Facility Equipment so substituted for or replaced.

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

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

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

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

Initial Bondholder shall mean the Rochester Fund Municipals and its successors, for so long as Rochester Fund Municipals shall be the sole Holder of the Bonds.

Land shall mean all that certain lot, piece or parcel of land generally known by the street address 517-529 Casanova Street, Bronx, New York 10474 all as more particularly described on Appendix A annexed hereto and made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding however, all real property or interest therein released pursuant to Section 6.4 hereof.

Lessee shall mean Nord Con Realty, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 and 9.3 hereof (including any surviving, resulting or transferee corporation as provided in Section 6.1 hereof).

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

PILOT Commencement Date shall mean July 1, 2001.

PILOT Depository shall mean The Bank of New York, or its successors.

Project shall mean the acquisition, renovation and equipping of the Facility more particularly described in Appendix B hereto.

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

Sales Taxes shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

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

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

Series 2000 Bonds shall mean the \$2,070,000 aggregate principal amount of Industrial Development Revenue Bonds (Just Bagels Manufacturing, Inc. Project), Series 2000 of the Agency issued, executed, authenticated and delivered under the Indenture consisting of the Series 2000A Bonds in the principal amount of \$985,000 and the Series 2000B Bonds in the principal amount of \$1,085,000.

Sublease Agreement shall mean the Sublease Agreement of even date herewith between the Lessee and the Sublessee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Sublessee shall mean Just Bagels Manufacturing, Inc., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns

pursuant to the Sublease Agreement (including any surviving, resulting or transferee corporation) as provided in Section 2.6 of the Guaranty Agreement.

Sublessee Employees shall mean full-time employees of the Sublessee on the Sublessee's payroll and employed within the City.

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

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, limited liability companies and other legal entities, including public bodies, as well as natural persons.

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

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

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

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2000 Bonds in the aggregate principal amount of \$2,070,000. The Series 2000 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(c) Prior to the issuance of the Series 2000 Bonds, the Agency will duly make the election provided for under Section 144(a) (4) (A) of the Code.

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

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

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its articles of organization or operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. The Lessee is duly qualified to do business in New York.

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

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

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

(e) The financial assistance of the Agency in the financing of a portion of the cost of the Project is reasonably necessary to discourage the Lessee and the Sublessee from removing the current facility outside of the State.

(f) The total cost of the Project being funded with the Series 2000 Bonds is at least \$2,070,000, which represents only a portion of the total cost to the Lessee and the Sublessee.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2000 Bonds shall be capable of being treated on the books of the Lessee as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

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

(i) No part of the proceeds of the Series 2000 Bonds will be used to finance inventory or will be used for working capital.

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

(k) This Agreement and the other Security Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms, except to the extent enforcement may be limited by bankruptcy, moratorium, reorganization and other similar laws affecting creditors' rights generally and by application of equitable principles.

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

(m) There is no action or proceeding pending or to the best knowledge of the Lessee threatened by or against the Lessee by or before any court or administrative agency that might adversely affect the ability of the Lessee to perform its obligations under this Agreement and each other Security Document to which the Lessee shall be a party, except as previously disclosed to the Agency and the Initial Bondholder, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Security Documents have been obtained.

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

(o) No part of the proceeds of the Series 2000 Bonds will be used to finance a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one third of the total project cost. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York State 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 Tax Law; or (ii) sales of a service to such customers.

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

(q) The square footage of the Improvements shall be approximately 17,500 square feet.

(r) The square footage of the Land is approximately 17,500 square feet.

(s) Neither the Lessee nor any Affiliate of either is a Prohibited Person.

## **ARTICLE II. The Project**

Section 2.1. **The Project** (a) The Lessee shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2000 Bonds title in fee simple to the Facility Realty free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2000 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2000 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project substantially in accordance with the Plans and Specifications. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Lessee. The Project work shall be supervised by Charles E. Contreras, hereby appointed the Project Supervisor and, in the event said individual resigns or becomes incapable of undertaking or carrying out his duties hereunder, the Agency upon recommendation of the Lessee shall appoint a successor.

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

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

(e) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Project, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Upon completion of the Project, the Lessee will as promptly as practicable obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee immediately upon receipt thereof.

(f) Upon written request, the Lessee or the Sublessee will extend to the Trustee all vendors' warranties (to the extent consented to by the vendors) received by the Lessee or the Sublessee in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform work with respect to the Project.

(g) The Lessee shall take such action and institute such proceedings as shall be reasonably be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts in excess of \$100,000 recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(h) Title to all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility and purchased with proceeds of the Series 2000 Bonds shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first.

Section 2.2. Completion by Lessee. The Lessee unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by December 20, 2001 and, subject to *force majeure*, that such completion will be effected in a first-class workmanlike manner, using appropriate materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement.

The date of completion for the Project shall be evidenced to the Agency and the Trustee by a certificate of the Project Supervisor of the Lessee, attached hereto as Schedule E, stating, except for any costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee (i) the date of completion of the Project, (ii) that the Project has been completed substantially in accordance with the Plans and Specifications and in a workmanlike manner and that all labor, services, materials and supplies used therefor have been paid for or arrangement for payment has been made, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that, based upon the title policy, the Agency has good and valid title to all property constituting part of the Facility and all property of the Facility is subject to this Agreement and the Sublease Agreement and the lien and security interest of the Agency Mortgage, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility has been made ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in his opinion for the payment of any remaining part of the costs of the Project. Such certificate shall further certify as to the determination of the Rebate Amount as provided in the Tax Certificate and the Indenture and shall direct any transfer to, or make payments of amounts for deposit in, the Rebate Fund. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee or the Sublessee against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.02 of the Indenture, and (z) that no Person other than the Agency and the Trustee may benefit therefrom. Such certificate of the Project Supervisor shall be accompanied by (i) a certificate of occupancy or a temporary certificate of occupancy and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) proof that all real property taxes and assessments, or PILOT payments under Section 4.3 hereof, against the Facility Realty have been paid; (iii) a certificate to the effect that the Project has been completed substantially in accordance with the Plans and Specifications; and (iv) a certificate of the Lessee that all costs of the Project have been paid in full.

Section 2.3. **Issuance of Series 2000 Bonds.** Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2000 Bonds in the aggregate principal amount of \$2,070,000 under and pursuant to a resolution adopted by the Agency on December 12, 2000, authorizing the issuance of the Series 2000 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2000 Bonds equal to (i) the interest accruing on the Series 2000 Bonds to the date of delivery thereof, if any, shall be deposited in the Interest Account of the Bond Fund, (ii) \$207,000, equal to the Debt Service Reserve Fund Requirement, shall be deposited in the Debt Service Reserve Fund, and (iii) the balance of the proceeds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the provisions of the Indenture. Pending such application, amounts in the Project Fund may be invested as provided in the Indenture.

Section 2.4. **Title Insurance.** Prior to the delivery of the Series 2000 Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) fee title insurance in an amount not less than \$2,070,000 insuring the Agency's fee simple title to the Facility Realty against loss as a result of defects in the title of the Agency, and (b) mortgagee title insurance in an aggregate



amount not less than \$2,070,000 insuring the Trustee's interest under the Agency Mortgage as holder of a first and second mortgage lien on the Facility Realty, in each case subject only to Permitted Encumbrances, and (c) a current survey of the site of the Facility Realty certified to the Agency, the Lessee, the Sublessee, the title insurer, the Initial Bondholder and the Trustee. The title insurance policy shall be subject only to Permitted Encumbrances. Any proceeds of such fee title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in title. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Redemption Account of the Bond Fund. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Trustee's interest as holder of a mortgage lien on the Facility Realty shall be paid to the Trustee and deposited by the Trustee in the Redemption Account of the Bond Fund.

Section 2.5. Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by Agency involvement with the Project shall be limited to purchases of Eligible Materials effected in whole from Bond proceeds by or for the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project. The Lessee shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earlier of (x) December 20, 2001, (y) the completion of the Project as provided in Section 2.2 hereof (z) receipt by the Lessee of notice from the Agency of the termination of the Sales Tax Letter, or (xx) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

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

"This contract is being entered into by Nord Con Realty, LLC, a limited liability company organized under the laws of the State of New York (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for Just Bagels Manufacturing, Inc., consisting of the acquisition of construction materials for incorporation in premises located at 517-529 Casanova Street, Bronx, New York 10474 (the "Premises"). The construction materials to be incorporated in the Premises which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency and the Agent hereby represents that this [contract, agreement, invoice, bill on purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the vendor or

contractor hereby acknowledges the terms and conditions set forth in this paragraph.”

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

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

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2000 Bonds and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the completion of the Project as provided in Section 2.2 hereof, (3) December 20, 2001 or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended thirty (30) days notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations with respect to any such default.

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

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

(B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by the Lessee or Sublessee at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to a Person as shall not constitute the Lessee or Sublessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to any item of Eligible Materials unless such item is used solely by the Lessee or Sublessee at the Facility Realty,

(C) shall only be available if that portion of the Project Cost for which the sales and use tax exemption is sought is paid for in whole and/or reimbursed in whole from the proceeds of the Series 2000 Bonds,

(D) shall not be available for any item of (i) Facility Equipment, (ii) rolling stock or watercraft, or (iii) computer software.

(E) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.5(c)(ii) hereof, provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(F) shall not be available for or with respect to any tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee as agent for the Agency for use by the Lessee at the Leased Premises,

(G) shall not be available for any tangible movable personal property (including computer software) or trade fixture,

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

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

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

(K) shall only be available for those costs set forth in the Sales Tax Letter.

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.5(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend both to those Project Costs the payment for which shall first be made from the proceeds of the Series

2000 Bonds as well as to those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2000 Bonds.

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

(vii) The Lessee shall use its best efforts to obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Lessee to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Letter for any purpose other than for the acquisition of Eligible Materials for incorporation into the Leased Premises.

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

(e) The Lessee shall on February 28, 2001 and on each February 28 thereafter until the completion of the term hereof file a statement with the New York State Department of Taxation and Finance, on a form (Form ST340 attached hereto as Schedule D or any successor or additional mandated form), and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency immediately after the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement of filing with the New York State Department of Taxation and Finance, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. To the extent permitted by applicable law, the Lessee's status as agent of the Agency shall be re-instated upon the Lessee's compliance with the requirements hereof.

(f) The Lessee agrees to submit to the Agency on August 1 of each year until the completion of the Project, a completed Benefits Report in form of Schedule B attached hereto to

the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on June 30 immediately proceeding such August 1.

**ARTICLE III.**  
**Lease Of Facility And Rental Provisions**

Section 3.1. **Duration of Term.** The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on May 1, 2026 or such earlier or later date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility.

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

Section 3.2. **Lease of the Facility.** The Agency hereby leases to the Lessee and the Lessee hereby leases from the Agency the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Lessee shall during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a manufacturing facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Lessee and the Sublessee shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

Section 3.3. **Rental Provisions; Pledge of Agreement, Sublease Agreement and Rents.** (a) The Lessee covenants to make rental payments which the Agency agrees shall be paid by the Lessee directly to the Trustee on each Lease Rental Payment Date for deposit in the Bond Fund in an amount equal to the sum of (i) with respect to interest due and payable on the Bonds, an amount equal to the interest next becoming due and payable on the Bonds on the immediately succeeding Interest Payment Date (less any amount available in the Project Fund or any earnings on the Debt Service Reserve Fund available for transfer to the Interest Account of the Bond Fund), (ii) the principal amount of the Bonds then Outstanding which will become due on the immediately succeeding Interest Payment Date (whether at maturity or by redemption or acceleration as provided in the Indenture), (iii) the Sinking Fund Installments which will become due on the Bonds on the immediately succeeding Interest Payment Date, and (iv) the principal of and redemption premium, if any, on the Bonds to be redeemed which will become due on the immediately succeeding redemption date together with accrued interest to the date of redemption. The Lessee further agrees to pay such additional amounts as set forth in the

Indenture with respect to interest on the Series 2000 Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Upon receipt by the Lessee of notice from the Trustee pursuant to Section 5.10(d) of the Indenture that the amount on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement (i) as a result of revaluation of the investments held therein, the Lessee shall pay to the Trustee for deposit in the Debt Service Reserve Fund six (6) substantially equal monthly payments commencing on the first day of the month immediately following receipt by the Lessee of notice of such deficiency such that the aggregate of such six (6) monthly payments shall equal such deficiency in the Debt Service Reserve Fund or (ii) if the deficiency exists due to the Lessee's failure to pay interest, principal, Sinking Fund Installments or Redemption Price, the Lessee shall upon ten (10) days' notice, or such greater time as agreed to by the Initial Bondholder, pay to the Trustee for deposit in the Debt Service Reserve Fund the amount of such deficiency.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund (after taking into account amounts available to be transferred from the Debt Service Reserve Fund) is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Lessee shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

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

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

(f) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Lessee may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Agency on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

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

(h) Pursuant to the Agency Mortgage, the Agency, the Lessee and the Sublessee shall grant a lien on and security interest in the Facility prior to the lien of this Agreement and the Sublease Agreement, and pursuant to the Indenture the Agency will pledge and assign to the Trustee as security for the Bonds all of the Agency's right, title and interest in this Agreement and the Sublease Agreement (except for the Agency's Reserved Rights), including all rental payments under Section 5(b) of the Sublease Agreement and hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Lessee hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement and the Sublease Agreement.

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

**Section 3.4. Obligation of Lessee Unconditional.** The obligation of the Lessee to pay the rent and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Holder of any Bond and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Facility or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

**Section 3.5. Grant of Security Interest.** In order to secure the payment of rentals and all the obligations of the Lessee hereunder and the payment and performances by each obligor of its obligations under the Security Documents, the Lessee hereby grants a security interest to the Agency in all of the Lessee's right, title, if any, and interest in and to the fixtures constituting part of the Facility and the proceeds thereof.

**Section 3.6. Assignment of Sublease Agreement.** As security for the payment of the Bonds and the payment and performance by each obligor of its obligations under the Security Documents, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals,

revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder. The Lessee agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and the Trustee and that any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void. In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency or the Trustee, all such liability being hereby expressly waived and released by the Lessee. Neither the Agency nor the Trustee shall be obligated to perform or discharge any obligation, duty or liability under the Sublease Agreement, or under or by reason of this assignment.

#### **ARTICLE IV.**

#### **Maintenance, Taxes, Payments In Lieu Of Taxes And Insurance**

##### **Section 4.1. Maintenance, Alterations and Improvements.**

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

(b) The Lessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility is not substantially impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$200,000, under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Agency and the Trustee (which approval shall not be unreasonably withheld or delayed and shall be given only at the direction of a majority in aggregate principal amount of the Holders of the Bonds Outstanding) and only after the Lessee shall have furnished to the Agency and the Trustee if reasonably requested in writing by a



majority in aggregate principal amount of Bonds Outstanding, a labor and materials payment bond, or other security, reasonably satisfactory to the Agency (as provided in Section 4.1(e) hereof) and the Trustee, and (v) such additions or alterations do not substantially change the nature of the Facility so that it would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act. All such alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, the Sublease Agreement, the Indenture and the Agency Mortgage, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be reasonably necessary to convey title to such property to the Agency and to subject such property to this Agreement and the Sublease Agreement and the lien and security interest of the Indenture and the Agency Mortgage, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment and other personal property not constituting part of the Facility (the "Lessee's Property") without conveying title to such property to the Agency nor subjecting such property to this Agreement or the Sublease Agreement and the lien and security interest of the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee in the Facility, the Sublease Agreement or this Agreement except for Permitted Encumbrances. The Lessee covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that the Agency Mortgage shall constitute a first mortgage lien on the Facility.

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

Section 4.2. Removal of Property of the Facility.

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

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

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$100,000, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition if the Bonds are subject to optional redemption;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Redemption Account of the Bond Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$100,000 shall be retained by the Lessee.

(b) The Lessee shall deliver or cause to be delivered to the Agency and the Trustee appropriate documents conveying to the Agency title to any property installed or placed upon the Facility Realty pursuant to Section 4.2(a) (i) hereof and subjecting such substitute or replacement property to this Agreement and the Sublease Agreement and the lien and security interest of the Agency Mortgage, and upon written request of the Lessee, the Agency shall deliver to the Lessee within sixty (60) days after receipt of such written report appropriate documents conveying to the Lessee title to any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to this Agreement and the Sublease Agreement and the lien and security interest of the Agency Mortgage of any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

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

#### Section 4.3. Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition of a manufacturing and storage facility consisting of the acquisition of an approximately 17,500 square foot building and the construction of improvements thereto to be used for the manufacture, and distribution of fresh and frozen bagels and bagel related products. The Facility Realty is located at 517-529 Casanova Street, Bronx, New York, 11101, being Section 10, Block 2768 and Lot 159.

(b) *Payments Prior to PILOT Commencement Date:*

The PILOT Commencement Date shall be July 1, 2001. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Lessee and not owned by the Agency.

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

It is recognized that under the provisions of the Act the Agency is generally required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty, payable to the PILOT Depository, in the manner and at the time provided in subsection (g) below or at such other times as the Agency may designate in writing. Except as otherwise provided below in this Section 4.3, the Lessee shall make payments in lieu of real estate taxes (i) with respect to the Land constituting part of the Facility Realty, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements constituting part of the Facility Realty, in the amounts as determined in subsections (e) and (f) below.

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

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

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

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

For the period commencing on the PILOT Commencement Date and terminating on the earliest to occur of (i) June 30, 2026 (the "PILOT Expiration Date"), or (ii) the date on which the Agency no longer owns the Facility Realty, or (iii) the date on which this Agreement is terminated if termination occurs prior to the PILOT Expiration Date (such earliest date to be hereinafter referred to as the "PILOT Termination Date"), the Lessee shall, in accordance with Section 4.3(g) hereof, be required to make no payments in lieu of real estate taxes with respect to the Land, (subject to Section 4.3(i)) except as herein after provided:

<b>YEAR</b>	<b>MAXIMUM LAND TAX ABATEMENT</b>
PILOT Commencement Date-June 30, 2022	No real estate taxes with respect to the land
July 1, 2022-June 30, 2023	20% of Full Land taxes
July 1, 2023-June 30, 2024	40% of Full Land taxes
July 1, 2024-June 30, 2025	60% of Full Land taxes
July 1, 2025-June 30, 2026	80% of Full Land taxes

Full Land Taxes shall mean that amount of taxes with respect to the Land constituting part of the Facility Realty as the Lessee would otherwise be required to pay from time to time if it were the owner of the Land.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer being in title to the Facility Realty, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer has title to the Facility Realty, the Lessee shall make payments in lieu of real estate taxes on the Land equal to Full Land Taxes.

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

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

- (1) from the PILOT Commencement Date through June 30, 2022, an amount equal to the lesser of CRET (i.e., Current Real Estate Taxes), and STRET (i.e., Stabilized Real Estate Taxes); and
- (2) from July 1, 2023, through the PILOT Termination Date, and assuming CRET is greater than STRET for the fiscal years occurring within such period, the following amounts as respectively calculated for the following years:

YEAR	LESSEE PAYS:
July 1, 2022- June 30, 2023	STRET + [CRET less STRET x 0.2]
July 1, 2023-June 30, 2024	STRET + [CRET less STRET x 0.4]
July 1, 2024-June 30, 2025	STRET + [CRET less STRET x 0.6]
July 1, 2025-June 30, 2026	STRET + [CRET less STRET x 0.8]

*Provided, however,* that if any fiscal year occurring within the period commencing July 1, 2023, through June 30, 2026. CRET is equal to or less than STRET, then the payment in lieu of real estate taxes on the Improvements for such fiscal year shall equal CRET.

Certain terms used in the above formula are defined as follows:

CRET or "Current Real Estate Taxes" shall mean the then-current assessed value of Improvements multiplied by the City's then-current real estate tax rate, as if the Facility Realty were owned by the Lessee rather than the Agency.

STRET or "Stabilized Real Estate Taxes" shall mean the assessed value of the Improvements as of May 25, 2000 multiplied by the City's tax rate as of July 1, 2000,

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

(f) *Subsequent Alterations and Improvements:*

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

Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof equal to

- (1) the amount of increase in assessed valuation of the Facility Realty, when the Additional Improvements are first assessed as completed, *multiplied by*
- (2) the City's real property tax rate prevailing after such first assessment, and thereafter, *less*
- (3) but only with respect to the Additional Improvements and not with respect to any other portion of the Facility Realty, any amount to which the Lessee would be entitled as a result of the Additional Improvements being eligible under the Industrial and Commercial Incentive Program.

(f) *Subsequent Alterations and Improvements:*

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate tax payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is seven Business Days before January 1 and on a date which is seven Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

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

In the event the Lessee shall fail to make any such installment payments, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid, and the Lessee agrees to pay the same to the PILOT Depository, or to such other representative of the Agency as the Agency may from time to time designate. The Lessee shall pay a late payment penalty of five per cent (5%) of any amount which is not paid when due under this Section 4.3. In addition, for each month or part thereof that a payment under this Section 4.3 is delinquent beyond the first month, interest shall accrue and be payable by the Lessee on the total amount due as provided above, plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made.

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

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date of transfer of title out of the Agency and back to the Lessee. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the fiscal year in which such transfer is made, shall be responsible for paying the real estate taxes due for the remaining portion of such fiscal year which follows transfer out of the Agency.

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

(i) *Withdrawal of Real Estate Tax Abatements:*

The Lessee understands and agrees that the Lessee is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Land and Improvements constituting the Facility Realty for that portion of the Facility Realty, if any, utilized or occupied by any Person other than the Lessee or any Affiliate thereof for so long as such utilization or occupation shall continue. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized or occupied or is intended to be utilized or occupied by Persons other than the Lessee or any Affiliate thereof. The Lessee agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Facility Realty utilized or occupied by any Person other than the Lessee or Affiliates of the Lessee. The Lessee understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Lessee as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Lessee would have been required to pay as if it were the owner of the Facility Realty for that portion of the Facility Realty utilized or occupied by Persons other than the Lessee or Affiliates thereof for so long as such utilization or occupation shall continue. The Lessee further agrees to furnish the Agency, in substantially the form provided in Schedule C attached hereto, with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth inter alia, all Persons other than the Lessee or Affiliates of the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Agreement or upon the occurrence of an Event of Default under this Agreement, the Lessee shall be required to make payments in lieu of real estate taxes on the Land and Improvements constituting a part of the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Facility Realty were owned by the Lessee. For purposes of the determination of such payments in lieu of real estate taxes, the tax rate shall be the rate then in effect as shown on the records of the proper City department.

(j) *Survival of Obligations:*

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

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

In the event the Facility is exempt from Impositions solely due to the Agency's ownership of the Facility, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Lessee were the owner of record of the Facility.

Section 4.5. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee and the Sublessee, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee, the Sublessee, the Agency and the Trustee in a minimum amount of \$5,000,000 aggregate coverage for personal injury and property damage;

(ii) Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Facility, and coverage for property damage insurance, all of which insurance shall include coverage for



removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee, the Sublessee, the Agency or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than the greater of (A) 80% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency and the Trustee) not less often than once every third year or such period required by the insurer, at the expense of the Lessee, or (B) the principal amount of the Outstanding Bonds; any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee or the respective Sublessee is its own insurer to the extent of \$50,000 of such risks;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee set forth in Section 6.2(a) (i) and (v) hereof and, to the extent not otherwise reasonably available, in Section 6.2(c) hereof), (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount in excess of \$10,000;

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

(v) Such other insurance in such amounts and against such insurable hazards as the Agency or the Trustee from time to time may reasonably require provided such insurance is available generally at rates which are commercially reasonable.

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

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

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

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

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

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

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

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

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

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

(ix) be reasonably acceptable to the Initial Bondholder.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility in excess of \$200,000 shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) Concurrently with the original issuance of the Series 2000 Bonds, the Lessee shall deliver or cause to be delivered to the Agency and the Trustee duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.5. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

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

Section 4.6. Advances by Agency, Trustee or Bondholders. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, the Trustee or any Bondholder holding 100% of the Bonds Outstanding, after first affording 10 days notice notifying the Lessee of any such failure on its part, upon notice by the Agency, the Trustee or such Bondholder (except if any emergency condition shall exist) may (but shall not be obligated to), and without waiver of any of the rights of the Agency, the Trustee or such Bondholder under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency, the Trustee or such Bondholder shall become an additional obligation of the Lessee to the Agency, the Trustee or such Bondholder, which amounts, together with interest thereon at the rate of the Trustee's "prime rate" plus two percent (2%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency, the Trustee or such Bondholder. Any remedy herein vested in the Agency, the Trustee or Bondholders for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency, the Trustee or such Bondholder for the collection of all such amounts so advanced.

Section 4.7. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply, and cause the Sublessee to observe and comply, with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Sublessee, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply, and cause the Sublessee to observe and comply, with all conditions, requirements, and schedules necessary to preserve and extend

all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee, the Sublessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Sublessee, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee to protect the security intended to be offered by the Security Documents.

## **ARTICLE V. Damage, Destruction And Condemnation**

### **Section 5.1. Damage, Destruction and Condemnation.**

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

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

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

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

(b) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom in excess of \$200,000 shall be paid to the Trustee and deposited in the Renewal Fund and the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee or any Bondholder, nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced, or

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

Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency and the Trustee in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (i) above to be exercised in accordance with the provisions of clause (i) above. Sums less than \$200,000 shall be paid directly to the Lessee.

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

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

(i) automatically be deemed a part of the Facility and owned by the Agency and be subject to this Agreement and the Sublease Agreement and the lien and security interest of the Agency Mortgage,

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

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

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

(v) if the estimated cost of such rebuilding, replacement, repair or restoration be in excess of \$200,000, be effected under the supervision of an Independent Engineer.

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

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

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

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Facility Realty but which, at the time of such damage or taking, is not part of the Facility nor subject to the Agency Mortgage and is owned or leased by the Lessee.

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

## ARTICLE VI. Particular Covenants

Section 6.1. Restrictions on Lessee. The Bonds will be payable by the Agency as to principal, interest and redemption premium, if any, out of the revenue derived from the leasing of the Facility, including all revenues and rental income derived from or in connection with the Facility and moneys received under this Agreement, and the parties hereto understand that the purchasers of the Bonds will make their purchase in reliance in part upon the credit and financial condition of the Lessee. The Lessee agrees that at all times during the term of this

Agreement it will (i) maintain its existence, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not sell, transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Facility, (iv) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement and (v) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, consolidate with or merger into another entity or permit one or more other entities to consolidate with or merge into it, or sell by public offering or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if (I) the Lessee is the surviving, resulting or transferee entity, as the case may be, and the resulting entity has a net worth at least equal to that of the Lessee prior to such merger or consolidation or otherwise acceptable to a majority in interest of the Bondholders Outstanding, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity, as the case may be, such entity (A) is a solvent entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and (1) in the Opinion of Counsel, (x) such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee shall have been a party, and (y) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (2) in the Opinion of Nationally Recognized Bond Counsel, such merger, consolidation, sale or transfer will not cause the interest on the Bonds to become includable in gross income for Federal income tax purposes, and (C) has a net worth (as determined in accordance with generally accepted accounting principles after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer or otherwise acceptable to a majority in interest of the Bondholders Outstanding. The Lessee further represents, covenants and agrees that it is and through the term of the Lease Agreement will (y) continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be duly qualified to do business in the State, and (z) not constitute a Prohibited Person. Notwithstanding any of the foregoing, the principals of the Lessee and the Sublessee shall be permitted to transfer their interests in the Lessee and Sublessee to immediate family members in connection with estate planning purposes.

Section 6.2. **Indemnity.** (a) The Lessee shall at all times protect and hold the Agency, the Initial Bondholder, the Trustee, the Bond Registrar and the Paying Agents (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to any Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the marketing, issuance, sale and remarketing of the Agency's Bonds for

such purpose, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) this Agreement, the Indenture or any other Security Document or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. Such indemnification set forth above shall be binding upon the Lessee for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the termination of this Agreement. No Indemnified Party shall be liable for any damage or injury to the person or property of the Lessee or the Sublessee or its directors, officers, employees, agents or servants or persons under the control or supervision of the Lessee or the Sublessee, or any other Person who may be about the Facility, due to any act or negligence of any Person other than for the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for and agrees to indemnify and hold each Indemnified Party harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2 (a) hereof or at the direction of the Lessee or the Sublessee with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, except as set forth in a certain Phase I Environmental Assessment Report dated October 4, 2000, prepared by Dorson Environmental Management, Inc. a true and correct copy of which the Lessee has delivered to the Agency, the Trustee and the Initial Bondholder (the "Audit"), the Lessee has no actual knowledge that any prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part



of the Lessee or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Lessee shall comply with and ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility, (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency and the Trustee, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event either of the Agency Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility free of any and all Hazardous Materials (other than in such levels and/or amounts as disclosed in the Audit) so that the conditions of the Facility shall conform with all applicable Federal, state and local laws, ordinances, rules or regulations affecting the Facility. For purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et. seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

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

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

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

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

**Section 6.3. Compensation and Expenses of Trustee, Bond Registrar, Paying Agents and Agency.** The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, (iii) the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including reasonable counsel fees, and (iv) the fees, costs and expenses of the Bond Registrar, and the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency. The Lessee shall further pay the reasonable fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or the Indenture or any other Security Document.

The Lessee agrees to pay any placement agent fees due to Roosevelt & Cross, Incorporated for placement of the Series 2000 Bonds, and the Lessee agrees to indemnify and hold harmless the Initial Bondholder and the Agency against any and all such claims in connection therewith.

On the date of the sale and delivery by the Agency of the Series 2000 Bonds, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of, an initial financing fee in the amount of \$12,892.64 plus \$2,500.00 which amount was received by the Agency prior to the date hereof as an application fee to the Agency. In addition, the Lessee agrees to pay, as an

annual administrative servicing fee to the Agency, the amount of \$500 payable initially on the sale and delivery by the Agency of the Series 2000 Bonds and on every anniversary thereof until the termination of this Agreement.

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

The Agency will, however, at the written request of the Lessee, so long as there exists no Event of Default hereunder, and with the prior written consent of the Initial Bondholder (not to be unreasonably withheld or delayed), grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of this Agreement and the lien of the Agency Mortgage, as shall be necessary or convenient for the operation or use of the Facility, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Facility, and provided, further, that any consideration received by the Agency, the Lessee or the Sublessee from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver and to cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement and the lien of the Agency Mortgage.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, and with the prior written consent of the Initial Bondholder (not to be unreasonably withheld or delayed), the Lessee may from time to time request in writing to the Agency the release of and removal from this Agreement and the leasehold estate created hereby and the release from the lien of the Agency Mortgage of any unimproved part of the Facility Realty (on which none of the improvements, including the buildings, structures, improvements, related facilities, major appurtenances, fixtures or other property comprising the Facility are situated) or any improved part of the Facility Realty not required for the Sublessee's operation provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the reasonable sole cost and expense of the Lessee, execute and deliver and cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty and convey title thereto in fee simple to the Lessee or such Person as the Lessee may designate subject to the following: (a) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Agreement; (b) any liens, easements and encumbrances created at the request of the Lessee or the Sublessee or to the creation or suffering of which the Lessee or the Sublessee consented; (c) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (d) Permitted Encumbrances (other than the lien of this Agreement and the Agency Mortgage); and (e) any

liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following:

(1) A certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the portion of the Facility Realty and the release so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom; and

(2) An amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greatest of (A) the original cost of such portion of the Facility Realty so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City or (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City.

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

**Section 6.5. Lessee's Covenant as to Tax Exemption.** (a) The Lessee covenants to comply with each requirement of the Code necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103 of the Code. In furtherance of the covenant contained in the preceding sentence, the Lessee agrees to comply with the provisions of the Tax Certificate as a source of guidance for complying with the Code.

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

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

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

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

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

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

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

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

Section 6.6. Financial Statements; No-Default Certificates. (a) The Lessee agrees to furnish to the Agency upon request, and to the Trustee and the Initial Bondholder, (i) as soon as available and in any event within one hundred-twenty (120) days after the close of each fiscal year of the Lessee, a copy of the annual financial statements of the Lessee, including balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for such fiscal year, prepared in accordance with generally accepted accounting principles and practices, and compiled by an independent certified public accountant, and (ii) upon request of the Agency and as soon as thereafter available after the close of each of the first three quarters of each fiscal year of the Lessee, a copy of the unaudited consolidated financial statements of the Lessee, including balance sheets as at the end of such quarter, and the related statements of income, balances, earnings, retained and changes in financial position for such quarter, prepared in accordance with generally accepted accounting principles and practices, certified by a member of the Lessee.

(b) The Lessee shall deliver to the Agency upon request, and to the Trustee and the Initial Bondholder with each delivery of annual financial statements required by Section 6.6(a) (i) hereof, (i) a certificate of an Authorized Representative of the Lessee as to whether or not, to the best of its knowledge after due and diligent inquiry, as of the close of such preceding Fiscal Year of the Lessee, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party, and as to whether or not a Determination of Taxability has occurred, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, (ii) a certificate of an Authorized Representative of the Lessee that

the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect, and (iii) an affidavit of an Authorized Representative of the Lessee swearing that, through the date of such affidavit, all costs for which the Lessee has obtained sales tax exemption by reason of Agency authorization (copies of the invoices for which shall be attached) were proper Project Costs. In addition, upon twenty (20) days' prior request by the Agency or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

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

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

(b) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Lease Agreement or the Sublease Agreement, of the Agency, the Lessee, the Sublessee or the Trustee or against any of the rentals or other amounts payable under this Agreement or the Sublease Agreement, (2) neither the Facility nor any

interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Sublessee, the Agency nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Trustee to protect the security intended to be offered by the Indenture and the Agency Mortgage.

Section 6.8. Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, including the right to grant the options to purchase herein contained, and that, subject to the terms and provisions of the Agency Mortgage, the Indenture and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Lessee shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Facility, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.9. No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEE OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES AND THE PURPOSES OF THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

pursuant to the Tax Certificate or the Indenture shall have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

**Section 6.11. Issuance of Additional Bonds.** The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency may in its sole discretion authorize, with the consent of the Holders of at least 66-2/3% in aggregate principal amount of the Bonds Outstanding, the entering into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2000 Bonds for the purpose of (i) completing the Project, (ii) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, or (iv) refunding Outstanding Bonds. If the Lessee is not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement, and the Lessee and the Sublessee shall enter into an amendment to the Sublease Agreement providing, among other things, for the payment by the Lessee and the Sublessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

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

**Section 6.12. Redemption Under Certain Circumstances; Special Covenants.**

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



for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholders of any such extension.

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

(b) Upon the circumstances set forth in Sections 2.03 (c), (d), (e) and (f) of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

Section 6.13. **Further Assurances.** The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and the Sublease Agreement and any rights of the Agency or the Trustee hereunder, under the Sublease Agreement, under the Indenture or under the Agency Mortgage.

Section 6.14. **Non-Discrimination; Employment Information, Opportunities and Guidelines.** (a) The Lessee shall ensure that all employees and applicants for employment at the Facility are afforded equal employment opportunity without discrimination.

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

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

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

(e) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility; provided however, if the Agency and the Lessee are unable to reach such mutual agreement, the Agency and the Lessee shall cooperate to ensure compliance with this Section 6.14.

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

(g) The Lessee hereby authorizes any private or governmental entity, including but not limited to the New York State Department of Labor ("DOL"), to release to the Agency and/or to the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to Lessee and Sublessee and their respective employees. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the Lessee's or Sublessee's possession which is pertinent to the Lessee and Sublessee and their respective employees. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 69 of 1993, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(h) Annually, by August 1 of each year until the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A-1 hereto, certified as to accuracy by a member of the Lessee. In addition, upon a redemption of the Series 2000 Bonds, the Lessee shall submit to the Agency an employment report, substantially in the form of Schedule A-2 hereto, certified as to accuracy by a member of the Lessee.

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

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

Section 6.17. **Subtenant Survey.** The Lessee shall file with the Agency by June 1, 2001 and every June 1 thereafter, a certificate of an Authorized Representative of the Lessee with respect to all tenancies in effect at the Facility Realty, in the form of the Subtenant Survey attached hereof as Schedule C.

Section 6.18. **Debt Service Reserve Fund Letter of Credit.** The Lessee may upon obtaining a written opinion of Bond Counsel indicating that there will be no adverse effect on the tax-exempt status of the Bonds, in lieu of or in partial substitution for cash or securities on deposit in the Debt Service Reserve Fund, deposit an irrevocable transferable letter of credit in favor of the Trustee. The Lessee shall give at least thirty (30) days notice to the Agency, the Initial Bondholder and the Trustee of the Lessee's desire to deposit such letter of credit and such deposit shall not occur without the written consent of the Agency, the Initial Bondholder and the Trustee.

## ARTICLE VII. Events Of Default; Remedies

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

(a) Failure of the Lessee or the Sublessee to pay any rental that has become due and payable by the terms of Section 3.3 hereof which results in a default in the due and punctual payment of the principal of, Sinking Fund Installments for, redemption premium, if any, or interest on any Bond;

~~(b) Failure of the Lessee or the Sublessee to pay any amount (except the obligation to pay rent under Section 3.3 hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.4 or 4.5 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding;~~

(c) Failure of the Lessee or the Sublessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a), (b) or (f) hereof) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee or Sublessee or any member thereof in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or Sublessee or any member thereof or of all or any substantial part of their respective assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee or Sublessee or any member thereof shall be entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee or the Sublessee shall fail to controvert in a timely

or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code or any order for relief against the Lessee or Sublessee or any member thereof shall be entered in an involuntary case under such Bankruptcy Code or any order for relief against the Lessee or Sublessee or any member thereof shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or Sublessee or any member thereof as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or by Section 2.6 of the Guaranty Agreement;

~~(f) Failure of the Lessee or the Sublessee to make any payment when due pursuant to Section 3.3(b) hereof and such failure continues for 10 business days after written notice to the Lessee or the Sublessee;~~

(g) Any representation or warranty made (i) by or on behalf of the Lessee or the Sublessee in the application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Series 2000 Bonds for approval of the Project or its financing, or (ii) by the Lessee or the Sublessee herein or in any of the other Security Documents or (iii) in the Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee and the original purchaser(s) of the Series 2000 Bonds, or (iv) in the Tax Certificate, or (v) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; or

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

(i) The Lessee, the Sublessee or any Guarantor shall become a Prohibited Person.

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

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

(b) The Agency, with the prior written consent of the Trustee, or the Trustee, may re-enter and take possession of the Facility without terminating this Agreement, and sublease the Facility for the account of the Lessee, holding the Lessee liable for the difference in the rent and

other amounts payable by the Sublessee in such subletting, and the rents and other amounts payable by the Lessee hereunder;

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

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

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

(f) The Agency may suspend or terminate the Sales Tax Letter or require the Lessee to surrender the Sales Tax Letter to the Agency for cancellation; and

(g) The Agency, without the consent of the Trustee or any Bondholder or any other Person but with notice to the Trustee and the Initial Bondholder, may proceed to enforce the Agency's Reserved Rights by (i) an action for damages, injunction or specific performance, and/or (ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payments of amounts due by the Lessee under the Agency's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Lessee under the Agency's Reserved Rights and/or (iii) conveying all of the Agency's right, title and interest in the Facility to the Lessee, which conveyance, upon such enforcement by the Agency of the Agency's Reserved Rights, the Lessee hereby irrevocably agrees to accept.

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

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

Notwithstanding the foregoing, prior to the earlier of the commencement of any legal proceedings by the Trustee to foreclose the lien and security interest of the Indenture in the Facility and the execution by the Agency pursuant to Section 7.3 hereof of a firm bilateral agreement for the reletting of the Facility, and if the Event of Default shall be capable of being remedied by the Lessee

- (1) the Lessee may, at any time, pay all accrued unpaid rentals (exclusive of any such rentals accrued solely by virtue of acceleration of the due date of the Bonds as provided in Section 7.01 of the Indenture), pay such other amounts in default hereunder, render such performance hereunder and otherwise fully cure all other defaults hereunder; and
- (2) in such event, this Agreement shall be fully reinstated, as if it had never been terminated, and the Lessee shall be accordingly restored to the occupancy, use and possession of the Facility.

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If this Agreement shall be fully reinstated, upon written request by the Lessee to the Agency and the Trustee, the Agency and the Trustee shall deliver to the Lessee a written confirmation of such reinstatement.

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

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

Section 7.5. **No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Trustee and the Lessee or any delay or omission on the part of

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

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

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

## ARTICLE VIII. Options

Section 8.1. Options. (a) The Lessee has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency, at least twenty (20) days prior to the date upon which the Trustee is to mail notice of redemption to Bondholders, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with



interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate.

~~(b) The Lessee shall have the option to purchase the Facility commencing on that date upon which the Bonds may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture.~~

(c) The Lessee shall also have the option to purchase the Facility on any date during the term of this Agreement within ninety (90) days of the occurrence of any of the following events:

(i) The Facility shall have been damaged or destroyed to such extent that as evidenced by a certificate of an Independent Engineer filed with the Agency and the Trustee (A) the Facility cannot be reasonably restored within a period of one year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Lessee and the Sublessee are thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one year from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Lessee and the Sublessee being thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Agency and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Lessee, this Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein or unreasonable burdens or excessive liabilities are imposed upon the Lessee or the Sublessee by reason of the operation of the Facility.

(d) The Lessee, in purchasing the Facility pursuant to Section 8.1(c) hereof, shall file with the Agency and the Trustee the certificate prescribed by Section 8.1(c) (1) or (2) hereof together with a certificate of an Authorized Representative of the Lessee stating that, as a result of the occurrence of the event giving rise to the exercise of such option to purchase, the Lessee

has discontinued, or at the earliest practicable date will discontinue, the operation of the Facility for its intended purposes, and in the case of Section 8.1(b) or 8.1(c) hereof, the Lessee shall pay to the Trustee as the purchase price, in legal tender, advance rental payments, for deposit in the Bond Fund (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and interest on, all the Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

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

(ii) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the Indenture;

(iii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate; and

(iv) one dollar.

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

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

**Section 8.2. Conveyance on Exercise of Option to Purchase.** At the closing of any purchase of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (a) a release, satisfaction or termination of the mortgage lien and security interest of the Agency Mortgage on the Facility and (b) other documents conveying to the Lessee by bargain and sale

deed without covenant against grantor's acts, good and marketable title in fee simple to the real property of the Facility Realty being purchased, as all such property then exists, and all rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or otherwise appertaining, subject to the following: (1) the nature, quality and extent to which title to said property shall have been vested in the Agency; (2) any Permitted Encumbrances to which title to said property was subject when conveyed to the Agency; (3) any liens, easements, security interests, claims, charges and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (4) any liens, security interests, claims, charges and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (5) any liens for taxes or assessments not then delinquent; and (6) the rights, if any, of any condemning authority, and (c) documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action, or any insurance proceeds or condemnation award, with respect to the Facility. Concurrently with the delivery of such title documents, there shall be delivered by the Agency to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Bonds.

Upon conveyance of the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5 and 9.17 shall survive such termination.

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

Section 8.4. **Termination of Agreement.** After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5 and 9.17 hereof. Notwithstanding any other provision of this Agreement to the contrary, upon the later of: (i) the full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture or (ii) the PILOT Termination Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Lessee or any successor thereto shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond

Registrar and the Paying Agents and all other amounts due and payable under this Agreement and any other Security Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate and thereupon the Lessee shall accept, pursuant to deed from the Agency, title to the Facility and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, and 9.17 hereof. In the event the Lessee does not accept title to the Facility and terminate this Agreement within such 45 day period, then commencing on the 46th day after transmittal of the notice requesting termination as above provided, the Lessee shall in addition to all other payment obligations due to the Agency hereunder make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have accepted title to the Facility and terminated this Agreement in accordance with the provisions hereof.

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

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

(b) If there shall occur a Recapture Event after the Substantial Completion Date (as defined below), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(i) one hundred per cent (100%) of the Benefits, if the Recapture Event occurs within the first (6) years after the Substantial Completion Date;

(ii) eighty per cent (80%) of the Benefits, if the Recapture Event occurs during the seventh (7th) year after the Substantial Completion Date;

(iii) sixty per cent (60%) of the Benefits, if the Recapture Event occurs during the eighth (8th) year after the Substantial Completion Date;

(iv) forty per cent (40%) of the Benefits, if the Recapture Event occurs during the ninth (9th) year after the Substantial Completion Date; or

(v) twenty per cent (20%) of the Benefits, if the Recapture Event occurs during the tenth (10th) year after the Substantial Completion Date.

The term "Benefits" shall mean, collectively:

1. all real estate tax benefits which have accrued to the benefit of the Lessee during such time as the Agency was the owner of the Facility Realty by reason of the Agency's ownership, such tax benefits to be computed by subtracting the payments in

lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee would have been required to pay during the lease term had the City determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such lease term; and

2. all miscellaneous benefits derived from the Agency's participation in the financing of the costs or assistance to the Project, including, but not limited to, any exemption from mortgage recording tax, commercial rent and occupancy tax, sales or use taxes and filing and recording fees.

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

1. The Lessee or the Sublessee shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City) if within the City, without prior written consent of the Agency;

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

3. The Lessee or the Sublessee shall have effected substantial changes in the scope and nature of the Lessee's or the Sublessee's operations at the Facility such that the Facility or any portion thereof is not being operated as a qualified "project" under the Act;

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

5. The Lessee or the Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility except as provided in Section 6.1 or Section 9.3.

The term "Substantial Completion Date" shall mean the date stated in a certificate of an Authorized Representative of the Lessee delivered pursuant to Section 2.2 hereof, after the Project has been substantially completed in accordance with such Section, and upon which date the Facility shall have commenced operations at substantially the level intended; provided, however, that the "Substantial Completion Date", as defined herein, shall be in any event deemed to occur no later than December 20, 2001 regardless of whether or not the Authorized Representative of the Lessee has delivered such certificate to the Agency.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee.

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

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

Section 8.6. **Energy Cost Savings Program.** The Agency and the Lessee acknowledge that in conjunction with the proposed issuance of the Bonds for financing a portion of the cost of the Project, the Lessee will be applying for benefits under the New York City Energy Cost Savings Program ("ECSP"). Neither the issuance of the Bonds nor any other action taken by any Person in connection with the transactions contemplated hereunder shall be deemed to confer or guaranty benefits to the Lessee under ECSP. In order to be eligible for reduced energy costs and other benefits under the ECSP, the Lessee must, independently and to the satisfaction of the ECSP Administrator, apply to and comply with the requirements of the ECSP. A sum of one dollar (\$1) of the proceeds from the sale of the Bonds shall be applied to pay a portion of the cost of renovations and improvements to the Project in accordance with ECSP.

## **ARTICLE IX. Miscellaneous**

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

Section 9.2. **Force Majeure.** In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Sections 4.5 or 6.2 hereof), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean, without limitation, acts of God, strikes, lockouts or other industrial disturbances, terrorism, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of

existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3. Assignment or Sublease. The Lessee may not at any time assign or transfer this Agreement (other than as provided for herein and in the Sublease Agreement), or sublet the whole or any part of the Facility (except for the Sublease Agreement) without the prior written consent of the Agency, the Initial Bondholder and the Trustee; provided further, that if the Agency, the Initial Bondholder and the Trustee consent to any such assignment, transfer or subletting, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any assignee or transferee of the Lessee in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee, transferee or sublessee shall utilize the Facility as a qualified "project" and as a manufacturing facility within the meaning of the Act, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document, (6) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty-five percent (25%) of such space would be subleased by the Lessee (excluding Affiliates of the Lessee or Sublessee), (7) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, (8) each such assignment, transfer or sublease contains such other provisions as the Agency, the Initial Bondholder or the Trustee may reasonably require, and (9) in the opinion of Nationally Recognized Bond Counsel, such assignment, transfer or sublease shall not cause the interest on the Bonds to be includable in gross income for Federal income tax purposes. The Lessee shall furnish or cause to be furnished to the Agency, the Initial Bondholder and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least twenty (20) days prior to the date of execution thereof.

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

limiting the rights of the Agency, the Initial Bondholder or the Trustee under the foregoing covenant by the Lessee.

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

Section 9.4. **Priority of Indenture and Agency Mortgage.** Pursuant to the Agency Mortgage, the Agency will grant a mortgage lien on and a security interest in the Facility, and pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other moneys receivable under this Agreement and the Sublease Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of and interest on the Bonds, and this Agreement and the Sublease Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture and such mortgage lien, security interest, pledge and assignment thereunder.

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

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

Section 9.7. **Notices.** All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, to the Chairman, 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, if to the Lessee, Nord Con Realty, LLC, 527 Casanova Street, Bronx, New York 10474 Attention: Charles E. Contreras with a copy to Jeffrey Citron, Esq., Davidoff & Malito, 605 Third Avenue, New York, New York 10158, and if to the Trustee, to First Union National Bank, One World Trade Center, Suite 4711, New York, New York 10048. A copy of each notice to the Lessee shall also be sent to the Lessee's counsel. The Agency, the Lessee and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or



other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

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

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

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

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

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

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

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

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

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

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

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

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

Section 9.18. **No Recourse under This Agreement or on Bonds.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing the Bonds.

Section 9.19. **Date of Agreement for Reference Purposes Only.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the date of original issuance and delivery of the Series 2000 Bonds.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel and attested under the seal of the Agency by its Assistant Secretary and the Lessee has caused its name to be subscribed hereto by a Member, all being done as of the year and day first above written.


(SEAL)

**NEW YORK CITY INDUSTRIAL  
DEVELOPMENT AGENCY**

Attest:



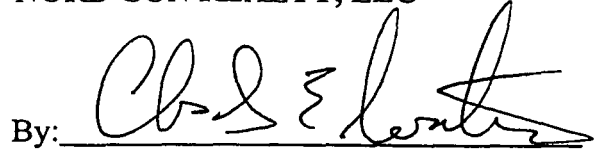
Assistant Secretary



By:

Carolyn A. Edwards  
Deputy Executive Director

**NORD CON REALTY, LLC**



By:

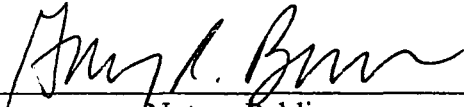
Charles E. Contreras  
Co-Managing Member

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On the 20th day of December, in the year two thousand, before me, the undersigned, personally appeared Carolyn A. Edwards, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

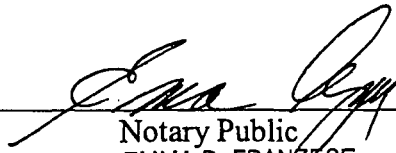
GARY R. BASSO  
NOTARY PUBLIC, State of New York  
No. 4880911  
Qualified in Westchester County  
Commission Expires Dec. 29, 20 00

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On the 19 day of December, in the year two thousand, before me, the undersigned, personally appeared Charles E. Contreras, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
EMMA D. FRANZESE  
Notary Public, State of New York  
No. 01FR5051129  
Qualified in Queens County  
Commission Expires October 30, 01

DESCRIPTION OF FACILITY REALITY

Schedule A

**SCHEDULE A**

ALL that certain plot, piece or parcel of land, situate, lying and being the Borough of Bronx, City and State of New York, known as Lots 377-383 inclusive and part of Lot 384 on a certain map entitled, "Map of 988 lots property of the East Bay Land and Improvement Company made by George C. Hollerith May 9, 1922 and filed in Bronx County, July 8, 1922 as Map No. 603" and which said parcels of land taken together are bounded and described as follows:

**BEGINNING** at a point on the west side of Casanova Street as laid down on final map, distant 174 feet and 50/100 of a foot northerly from the corner formed by the intersection of the north side of Oak Point Avenue as legally opened and the west side of Casanova Street as laid down on final maps;

**RUNNING** THENCE westerly and parallel with the northerly side of Oak Point Avenue and part of a distance through a party wall 100 feet;

**THENCE** northerly parallel with the west side of Casanova Street 175.50 feet;

**THENCE** easterly and parallel with the northerly side of Oak Point Avenue 100 feet to the west side of Casanova Street;

**THENCE** southerly along the westerly side of Casanova Street 175.50 feet to the point or place of **BEGINNING**.

DESCRIPTION OF PROJECT

The (a) acquisition of certain premises located at 517-529 Casanova Street, Bronx, New York 10474, and (b) improving, equipping, and renovating an approximately 17,500 square foot manufacturing facility.



# Annual Employment Report

For the Year Ending June 30, 2000

In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency must require all of its project companies to complete and return the Report to the Agency no later than July 17, 2000.

**Company:**

**Telephone #** \_\_\_\_\_

**Tax ID #** \_\_\_\_\_

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

**Number of existing FULL TIME JOBS** \_\_\_\_\_

**Number of existing PART TIME JOBS** \_\_\_\_\_

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

**Name of Company** \_\_\_\_\_

**Principal/Owner/Chief Financial Officer** \_\_\_\_\_ (Please Print)

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

*If you have any questions, please call the IDA Compliance Helpline at (212) 312-3963.*

*Our fax number is (212) 312-3918.*

*Please submit the completed form to: New York City Industrial Development Agency  
110 William Street, New York, NY 10038  
Attention: Compliance Unit*

# Annual Employment Report

## FOR BOND REDEMPTIONS AND TERMINATIONS

In order to comply with Local and State employment reporting requirements, The New York City Industrial Development Agency must require all of its project companies to complete and return the Annual Employment Report.

**Project Company & Project Location(s)** (use additional sheet if necessary)

---

---

**Telephone #** \_\_\_\_\_

**Tax ID #** \_\_\_\_\_

Please provide your most current employment figures at the Project Location(s) listed above. Do not include any subcontractors and consultants. Include only employees and owners/principals on your payroll at the Project Location(s).

**Number of existing FULL TIME JOBS** \_\_\_\_\_

**Number of existing PART TIME JOBS** \_\_\_\_\_

**Date of job information (Month/Day/Year)** \_\_\_\_\_

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

**Name of Company** \_\_\_\_\_

**Principal/Owner/Chief Financial Officer** \_\_\_\_\_ (Please Print)

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

*If you have any questions, please call the Compliance Helpline at (212) 312-3963*

# BENEFITS REPORT

For benefits utilized during the period of \_\_/\_\_/99 - \_\_/\_\_/00

## SALES TAX BENEFIT

not applicable, no benefit used this period 0      not applicable, maximum benefit reached 0

not applicable, project not eligible for benefit 0

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

## BUSINESS INCENTIVE RATE - (BIR)

not applicable, no benefit used this period 0      not applicable, maximum benefit reached 0

not applicable, project not eligible for benefit 0

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

Principal/Owner/Chief Financial Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

(Please print)

If you have any questions, please call the IDA Compliance Helpline at (212) 312-3963.

Please submit the completed form to:

New York City Industrial Development Agency  
 110 William Street, New York, NY 10038  
 Attention: Compliance Unit

\* 110 William Street, New York, NY 10038 212-619-5000

## 20-- subtenant survey

In order to verify compliance with Section 9.3 of your Lease Agreement, please list all subtenants occupying space in your facility and the corresponding information in complete form by **JANUARY 1, 20--**.

**\*IMPORTANT FOR PILOT RECIPIENTS\***

FAILURE TO SUPPLY THIS INFORMATION BY THE ABOVE STATED DUE DATE WILL CONSTITUTE AN EVENT OF DEFAULT PURSUANT TO SECTION 7.1 OF THE LEASE AGREEMENT AND YOUR COMPANY MAY BE SUBJECT TO A TERMINATION OF THE PILOT BENEFITS.

<b>Subtenant</b>	<b>Floor</b>	<b>Square Feet Leased</b>	<b>Lease Begins</b>	<b>Lease Ends</b>
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*I, the undersigned hereby certify to the best of my knowledge and belief, that the information reported above is true and complete. I understand that this information is submitted pursuant to the requirements of the IDA Lease Agreement.*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Please mail this form to the address below, ATTENTION: COMPLIANCE UNIT**

New York State Department of Taxation and Finance

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

For Period Ending December 31, \_\_\_\_\_ (enter year)

**Project Information**

Name of IDA agent/project operator		Federal employer identification number (EIN)	
Street address		Telephone number	
City	State	Zip code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number	
City	State	Zip code	
Name of IDA			
Street Address			
City	State	Zip code	
Name of project		Project number	
Street address of project site			
City	State	Zip code	

1. Project purpose:
- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Services  | <input type="checkbox"/> Construction          | <input type="checkbox"/> Agriculture, forestry, fishing    |
| <input type="checkbox"/> Wholesale trade   | <input type="checkbox"/> Retail trade          | <input type="checkbox"/> Finance, insurance or real estate |
| <input type="checkbox"/> Transportation, communication, electric, gas or sanitary services |  |  |
| <input type="checkbox"/> Manufacturing   | <input type="checkbox"/> Other (specify) _____ |  |

2. Date project began: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 MM DD YY

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

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

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

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

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

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

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

## General Information

### Who must file?

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

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

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

### What must be reported?

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

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

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

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

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

See instructions below for additional information required.

## Project information

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

### Name of IDA agent/project operator

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

### Name of IDA agent/project operator's authorized representative

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

### Name of IDA

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

### Name of Project

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

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## Line instructions

**Line 1 – Project purpose** – Check the box that identifies the purpose of the project. If you check *Other*, please be specific in identifying its purpose.

**Line 2** – Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Line 3** – Enter the date on which you, or your general contractor or subcontractor, actually began or expect to begin construction or installation on the project. If the project does not involve any construction, enter **Does not apply**.

**Line 4** – Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

**Line 5** – Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

**Line 6** – Enter the total number of years and months from the project's inception to its completion or expected completion.

**Line 7** – Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

## Signature area

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

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

## When is the report due?

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

### Need help?

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

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

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

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

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

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2100 (8:30 a.m. to 4:25 p.m., eastern time)



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



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

### Privacy notification

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

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

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

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

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of [Lessee] a [Lessee State of Incorporation] [Lessee Business Type] (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of [As of Date] (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

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

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

the Agency has good and valid marketable fee simple title to the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

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

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

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

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_,

[LESSEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: [Lessee Authorized Officer]