

Transcript Document No.1

LEASE AGREEMENT

Dated as of November 1, 2007

by and between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

and

PROXIMA & KIM, LLC

(Proxima Inc. Project)

Affecting the Land generally known by the street address

109-05 178th Street

Jamaica, New York 11433

Block 10336 Lot 160

in Queens County,

City and State of New York

as more particularly described in

Exhibit A to this Lease Agreement

on the Official Tax Map of Queens County

Record and Return to:

Nixon Peabody LLP

437 Madison Avenue

New York, New York 10022

Attention: Scott R. Singer, Esq.

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LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of November 1, 2007 (this "Agreement"), by and between NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and validly 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 PROXIMA & KIM, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York (the "Lessee"), having its principal office at 54-60 46th Street, Maspeth, New York 11433, 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, 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 (the "City") and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and Proxima Inc., a New York business corporation (the "Sublessee"), for an industrial "project" within the meaning of the Act within the territorial boundaries of The City of New York and located on those certain lots, pieces or parcels of land consisting of an approximately 51,220 square foot parcel of land, in Block 10336 Lot 60, generally known as and by the street address 109-05 178th Street, Jamaica, New York 11433 (collectively, the "Land"); and otherwise described in Exhibit A – "Description of Land" – attached hereto and made a part hereof; and

WHEREAS, the project will consist of the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building on the Land, all for use in the Sublessee's wholesale cosmetic distribution business, for lease to the Agency and sublease to the Lessee, for subsequent sub-sublease to the Sublessee (the "Project"); and

WHEREAS, to facilitate the Project, the Agency, the Lessee and the Sublessee have commenced negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program in which (i) the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to the Company Lease (as defined below), (ii) the Agency will acquire a leasehold interest in the Facility Equipment pursuant to the Company Lease (as defined below), and (iii) the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement; and, in furtherance of such purposes, the Agency adopted a resolution on October 9, 2007 (the "Authorizing Resolution"), authorizing the undertaking of the Project, the acquisition, renovation and equipping of the Facility by the Lessee, the lease of the Facility by the Lessee to the Agency, the sublease of the Facility by the Agency to the Lessee and the sub-sublease of the Facility by the Lessee to the Sublessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee and the Sublessee through a straight-lease transaction has been determined to be necessary to induce the Sublessee to remain and expand their operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such financial assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, in order to finance a portion of the costs of the Project, Genworth Financial Commercial Mortgage Warehouse LLC, a Delaware limited liability company (the "Mortgagee") has agreed to lend \$5,100,000, to the Lessee in order to finance the acquisition, renovation and equipping of the Facility (the "Mortgaged Property"); and

WHEREAS, in order to evidence its obligation to repay the loan made by the Mortgagee to it, the Lessee will issue to the Mortgagee a promissory note (the "Mortgage Note") in the principal amount of the loan (the "Mortgage Loan"); and

WHEREAS, in order to secure its obligations to the Mortgagee under the Mortgage Note, the Lessee and the Agency will grant a mortgage on the Facility to the Mortgagee, subject to permitted encumbrances thereon, pursuant to a certain Mortgage, Assignment of Rents and Leases and Security Agreement dated November 20, 2007 (the "Mortgage"; together with the Mortgage Note, the "Mortgage Documents"), from the Lessee and the Agency to the Mortgagee; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Company Lease Agreement, dated as of November 1, 2007 (the "Company Lease"), good and marketable leasehold title to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof; and

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

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

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 or create a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this Agreement):

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

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

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

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

Agreement shall mean this Lease Agreement, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Approved Facility shall mean the industrial facility located at 109-05 178th Street, Jamaica, New York 11433, all for use in the business of wholesale cosmetic distribution.

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

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

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

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

Closing Date shall mean November 20, 2007.

Commencement Date shall mean November 20, 2007, on which date this Agreement was delivered.

Company Lease shall mean the Company Lease referred to in the recitals to this Agreement.

Conduct Representation shall mean any of the representations made by the Lessee under Section 1.5(a) hereof or by the Lessee or any other Person in any Required Disclosure Statement delivered to the Agency.

Control or Controls shall mean the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting

securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

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

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

Facility shall mean, collectively, the Facility Realty and the Facility Equipment now or hereafter located on the Land and the Improvements.

Facility Equipment shall mean those items of equipment leasehold title to which shall be acquired by the Lessee on behalf of the Agency for installation or use at the Facility Realty as part of the Project pursuant to Section 2.2 of this Agreement to be leased by the Agency to the Lessee pursuant to this Agreement and described in the Description of Facility Equipment in the Appendices attached hereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. 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 and exclude all items of Facility Equipment so substituted for or replaced, and further exclude all items of Facility Equipment removed as provided in Section 4.2 hereof.

Facility Realty shall mean the land described in Exhibit A – “Description of the Land” hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.2 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on October 1 and ending on September 30 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

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

Guarantors shall mean the Lessee, the Sublessee, the Individual Guarantor and their respective permitted estates, successors and assigns.

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

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

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

Individual Guarantor shall mean Hyon Chung Kim.

Land shall have the meaning provided in the recitals hereto, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Lessee shall mean Proxima & Kim, LLC, a New York limited liability company, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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

Loan shall mean the Mortgage Loan.

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

Mortgage shall mean the mortgage and security agreement referred to in the recitals to this Agreement and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity therewith.

Mortgagee shall mean Genworth Financial Commercial Mortgage Warehouse LLC, a Delaware limited liability company, and its successors and assigns under the Mortgage.

Mortgage Loan shall mean the loan by the Mortgagee to the Lessee in the amount of \$5,100,000, representing the principal amount of the Mortgage, in connection with the Project and shall include any and all amendments, modifications and extensions thereof and supplements thereto hereafter made in conformity therewith.

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

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

Note shall mean the Mortgage Note.

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

Permitted Encumbrances shall mean:

- (i) the Company Lease, this Agreement, the Sublease Agreement and the Mortgage;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility property or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;
- (v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;
- (vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized

Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(vii) those exceptions to title to the Facility enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof insuring the leasehold title of the Agency to the Facility, a copy of which is on file at the offices of the Agency including any assignment of leases and rents in favor of the Mortgagee or any other lien in favor of the Mortgagee.

Person shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

PILOT Depository shall mean The Bank of New York, a corporation organized and existing under the laws of the State of New York, or its successors.

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

Project shall have the meaning ascribed thereto in the recitals hereto.

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

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

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

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

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

Sales Taxes shall mean New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109, and 1110 of the

New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, dated November 20, 2007, substantially in the form of Exhibit D hereto, which the Agency shall make available to the Sublessee on behalf of the Lessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease Agreement, dated of even date herewith, between the Lessee, as sublessor, and the Sublessee, as sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Sublessee shall mean Proxima Inc., a New York business corporation, and its permitted successors and assigns.

Sublessee Documents shall mean the Sublease Agreement and the Guaranty.

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

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

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

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

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

Section 1.3 Representations and Warranties by Agency. The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) assuming the accuracy of the representations made by the Lessee and by the Sublessee, is authorized and empowered to enter into the transactions

contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder, and (iii) by proper action of its board of directors, has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

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

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

(ii) the Project is reasonably necessary to induce the Sublessee to remain and expand their operations within the City;

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

(iv) the transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs;

(v) undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and

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

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

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

- (i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
- (ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- (iii) has been convicted of a felony in the past ten (10) years;
- (iv) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- (v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

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

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

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

and delivery of this Agreement and each other Project Document to which the Lessee shall be a party or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

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

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

(g) Subject to Sections 4.2 and 5.1 hereof, no property constituting part of the Facility shall be located at any site other than at the Facility.

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

(i) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

(j) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

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

(l) This Agreement and the other Project Documents constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

(m) The Lessee and the Sublessee are each in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and

regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(n) The Mortgage Note evidences the obligation of the Lessee to repay the Mortgage Loan made by the Mortgagee to the Lessee pursuant to the Mortgage Note for the purpose of financing a portion of the cost of the Project in the amount of \$5,100,000.

(o) The Project Cost Budget attached as Exhibit C to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project, and the Lessee represents and warrants that approximately \$2,533,000 of the aggregate of the costs of the Project will be provided from equity funds on the part of the Lessee and/or the Sublessee.

(p) The amounts provided to the Lessee and/or the Sublessee pursuant to the Mortgage, together with other moneys available to the Lessee and/or the Sublessee, are sufficient to pay all costs in connection with the completion of the Project.

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

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

(s) The rentable square footage of the Improvements constituting part of the Facility is approximately 55,000 rentable square feet.

(t) The aggregate square footage of the Land is approximately 51,220 square feet.

(u) The fiscal year of the Lessee is the 365 or 366 day period, as the case may be, commencing on October 1, and ending on September 30 of each calendar year.

(v) The Project will be complete by November 30, 2008.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1 The Company Lease. The Agency has acquired, for good and valuable consideration therefor, pursuant to the Company Lease, good and marketable leasehold title to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is

understood that (i) good and merchantable leasehold title to all items of Facility Equipment intended to be acquired for use and operation at the Facility Realty, and good and marketable leasehold title to all Improvements intended to be incorporated or installed in the Facility Realty as part of the Project, shall, in each case, vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest, in each case, leasehold title to such Improvements and items of Facility Equipment in the Agency and to protect such leasehold title against claims of any third parties.

Section 2.2 The Project.

(a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency for purposes of undertaking the Project, including, without limitation, (i) acquiring the Land and renovating and installing the Improvements thereon or therein, (ii) acquiring the Facility Equipment, (iii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iv) paying all fees, costs and expenses incurred in the acquiring and renovating of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and the Mortgage Loan, and (v) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The Lessee unconditionally represents, warrants, covenants and agrees that it will complete the Project, or cause the Project to be completed by November 30, 2008, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Lessee may revise the scope of the Project, upon written notice to the Agency. In undertaking the Project, the Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) proceeds of the Mortgage Loan, and (ii) equity furnished by the Lessee and/or the Sublessee to the extent such funds shall be necessary to cover costs of the Project that exceed such other sources of funds. In the event that moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources and shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments to be made under this Agreement. The Lessee hereby covenants and agrees that it shall not commence the renovation of the Project until it has delivered the

Architect's Certificate and the General Contractor's Certificate to the Agency in accordance with Sections 6.18 and 6.19 hereof.

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

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

(d) Upon completion of the Project, the Lessee shall evidence completion of the Project by delivering to the Agency a certificate of an Authorized Representative of the Lessee in substantially the form set forth in Schedule A attached hereto, together with all attachments required thereunder, including a Final Project Cost Budget.

Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

If the aggregate costs of the Project upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project cost), then, on request of the Agency, the Lessee shall provide evidence to the reasonable satisfaction of the Agency as to the reason for such discrepancy.

Section 2.3 Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) leasehold title insurance policies in an amount not less than \$500,000 insuring the Agency's leasehold interest in the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of the Land and the Improvements certified to the Lessee, the title company issuing such title insurance policy and the Agency. Any proceeds of such leasehold title insurance shall be paid to the Lessee and applied by the Lessee to

remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's leasehold title interest shall be applied to the payment of any Rental Payments due hereunder; and any balance thereafter may be used by the Lessee for any corporate purpose.

Section 2.4 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by 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 Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

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

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Proxima & Kim, LLC, a New York limited liability company, and/or by Proxima Inc., a New York business corporation (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building located on an approximately 51,220 square foot parcel of land, located at 109-05 178th Street, Queens, New York, Block 10336 and Lot 160, all for use as a wholesale cosmetic distribution business (the "Project"). The building materials, fixtures, capital improvements, equipment and other personal property to be used for the Project that are 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 Sales Tax Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor]

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

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

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

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) November 30, 2008, (3) the completion of the Project as provided in Section 2.2 hereof, or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof. The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee (y) 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, or (z) the Agency shall determine within its sole discretion that the Lessee or the Sublessee or any Affiliate of the Lessee or the Sublessee or any Principal of the Lessee, the Sublessee or of any such Affiliate has committed a material violation of a material Legal Requirement, in which event such suspension shall continue until such time as the Agency shall determine, within its sole discretion (a copy of which determination shall be delivered to the Lessee) to waive such suspension or that such material violation of a material Legal Requirement has been cured to the Agency's satisfaction.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended twenty (20) days after notice to the Lessee that the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations, with respect to any such default.

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

(A) shall not be available for payment of any costs, other than the costs of the Exempt Property, or for any items of personalty,

(B) shall only be utilized for items of Exempt Property that shall be purchased, completed or installed for use only by the Lessee and the Sublessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such items of Exempt Property to a Person as shall not constitute the Lessee or the 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 Exempt Property unless such item is used solely by the Lessee and by the Sublessee at the Facility,

(C) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(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,

(D) shall not be available for or with respect to any item of rolling stock or water craft, or 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 or the Sublessee for incorporation within or location at the Facility,

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

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

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

(H) 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 2.4(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 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) 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 for which the Lessee shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(d) The Lessee shall observe and comply with the terms and conditions of the Sales Tax Letter, and upon the termination, expiration or cancellation of the Sales Tax Letter, the Lessee shall promptly surrender the same to the Agency.

(e) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement (Form ST-340 or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. Such information shall be provided within thirty (30) days following written request from the Agency. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, 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 and/or lease Exempt Property 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 that 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.

(f) The Lessee agrees to submit to the Agency on August 1 of each year a completed Employee and Benefits Report in the form of Schedule B attached hereto to the extent that the Lessee shall have received benefits with respect to Sales Taxes during the previous calendar year.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby leases to the Lessee, and the Lessee hereby leases from the Agency, the Facility for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Lessee of the Facility as the same is acquired and renovated shall take no further act or deed by the parties hereto).

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

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on midnight (New York City time), on (i) the earlier of PILOT Expiration Date, as defined herein, or June 30, 2033 or (ii) such earlier date as this Agreement may be terminated by the Agency or the Lessee as hereinafter provided.

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

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

(c) Missed Payments. In the event the Lessee should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at

the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

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

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

Section 3.6 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Lessee. The Facility and the leasehold interests therein secure the Lessee's obligations to the Mortgagee under the Mortgage.

Section 3.7 Assignment of Sublease Agreement. In order to secure the payment and performance of obligations of the Lessee under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom (except for those rentals payable under Section 5(d) of the Sublease Agreement), and the right to enforce all of the Lessee's rights and remedies thereunder.

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Lessee and the Sublessee at the Facility shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be similar 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) as a result of such alterations or additions, the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or the operating efficiency of the Facility is not materially impaired,

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

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

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

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

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

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

(e) To the extent required by the New York State Finance Law Section 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 an executed contract, the Lessee shall deliver to the Agency a copy of the proposed contract therefor along with a bond, in compliance with New York State Finance Law Section 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).

Section 4.2 Removal of Property of the Facility.

(a) The Lessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (the "Existing Facility Property") and thereby acquiring such Existing Facility Property free of the leasehold interest of the Agency, provided, however, such Existing Facility Property is

substituted or replaced by property (t) having equal or greater fair market value, operating efficiency and utility and (u) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, and no such removal shall be effected if (w) such removal is to another location other than the Facility Realty, (x) such removal would change the nature of the Facility as an Approved Facility and a "project" within the meaning of the Act, (y) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, or (z) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency leasehold title to any property installed or placed upon the Facility Realty pursuant to Section 4.2(a) hereof and subjecting such substitute or replacement property to the Company Lease, this Agreement, and the Sublease Agreement, and within thirty (30) days after receipt of written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees) incurred by the Agency in subjecting to the Company Lease, this Agreement and the Sublease Agreement any property installed or placed on the Facility as part of the Facility pursuant to this Section 4.2 or Section 4.1 hereof.

(c) Other than as set forth in Section 4.2(a) above, the Lessee shall not, without the prior written consent of the Agency and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Facility Equipment or change the location of the Facility Equipment or any part thereof from the Facility Realty.

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

(e) Within 120 days after the close of each Fiscal Year of the Lessee during which (i) action was taken by the Lessee pursuant to Section 4.1(b) or action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) no action was taken by the Lessee pursuant to Section 4.1(b) or no action involving property having a value in the aggregate exceeding \$250,000 was taken by the Lessee pursuant to Section 4.2(a) hereof, the Lessee shall, upon request of the Agency, furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition, renovation and equipping by the Lessee of an industrial facility, consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building on an approximately 51,220 square foot parcel of land, located at 109-05 178th Street, Jamaica, New York 11433, Block 10336 and Lot 160.

(b) *Payments Prior to PILOT Commencement Date:* The PILOT Commencement Date shall be July 1, 2008. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the City all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Agency had no interest in or control over the Facility Realty.

(c) *Payments in Lieu of Real Estate Taxes, Generally:* It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property 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 in accordance with the provisions of Section 4.3(g) hereof (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 that may prevent the Facility Realty from being recognized as exempt by the City. The Lessee acknowledges that the Agency has not represented the availability of any such exemption for the Facility Realty, and the Lessee hereby releases the Agency from any claim arising from any loss of the benefits that were contemplated hereunder.

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

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, 2033 (the "PILOT Expiration Date"), or (ii) the date on which the Agency no longer holds a leasehold estate in the Facility, 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 make no payments in lieu of real estate taxes with respect to the Land (subject to Section 4.3(i)).

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

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

For the period commencing on the PILOT Expiration Date until the date on which the Agency no longer holds a leasehold estate in the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

If the PILOT Termination Date has occurred for reasons other than the Agency no longer holding a leasehold estate in the Facility, for the period commencing on such PILOT Termination Date until the date on which the Agency no longer holds a leasehold estate in the Facility, 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:

(i) For the period commencing on the PILOT Commencement Date and ending 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:

- A. from the PILOT Commencement Date through June 30, 2029, an amount equal to the lesser of CRET or STRET; and
- B. from July 1, 2029, through the PILOT Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

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

July 1, 2031 - June 30, 2032	$\text{STRET} + [(\text{CRET less STRET}) \times 0.6]$
July 1, 2032 - June 30, 2033	$\text{STRET} + [(\text{CRET less STRET}) \times 0.8]$

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *General Payment Provisions:* In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) Business Days before July 1 of every year to The Bank of New York (the “PILOT Depository”) (or to such other Person as the Agency shall direct the Lessee in writing), or to such other representative of the Agency, or at such other times, in either case as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

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

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

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

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

(h) *Apportionment of Payments after Transfer*: The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date of transfer of the Agency's leasehold interest to the Lessee which date shall be the date of the termination of this Agreement. 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 portion of such fiscal year that remains after transfer out of the Agency.

With respect to the semi-annual period of the fiscal year in which the Agency conveys its leasehold interest to the Facility Realty 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, (y) as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility, if any, utilized or occupied by any Person (other than the Lessee or the Sublessee but including any Sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization or occupation shall continue, and (z) an amount equal to that amount of taxes with respect to the Facility Realty that the Lessee would otherwise be required to pay from time to time if it were the owner of the Facility Realty and the Agency had no leasehold or other interest in the Facility Realty ("Full Real Estate Taxes"), in the event the Agency shall determine within its sole discretion that the Lessee or the Sublessee or any Affiliate of the

Lessee or the Sublessee or any Principal of the Lessee, the Sublessee or of any such Affiliate has committed a material violation of a material Legal Requirement and deliver notice of such determination to the Lessee, and the Lessee's obligation in such event to pay Full Real Estate Taxes shall continue until such time as the Agency shall determine, within its sole discretion (a copy of which determination shall be delivered to the Lessee), to waive the requirement that the Lessee pay Full Real Estate Taxes or such material violation of a material Legal Requirement has been cured to the Agency's satisfaction. The Lessee hereby represents to the Agency that no portion of the Facility is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessee or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

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

(j) *QEZE Tax Credits:*

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

(k) *Survival of Obligations:* The obligations of the Lessee under this Section 4.3 shall survive the termination or expiration of this Agreement for any reason whatsoever.

The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 4.3, for good cause shown.

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, the Company Lease, this Agreement, the Sublease Agreement, any estate or interest of the Agency, the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable hereunder or under the Company Lease or the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall forward, as soon as practicable, 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 Realty is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's leasehold interest in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on the Facility if the Agency did not hold a leasehold interest in the Facility Realty.

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 or the Sublessee. In addition to this general requirement, such insurance shall, for purposes of subsections (b) – (g) of this Section 4.5 include, without limitation the insurance coverages described in paragraphs (i) through (v) immediately below (hereinafter: "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the General Liability insurance referred to below, Owners & Contractors Protective Liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$5,000,000 aggregate coverage for bodily and personal injury and property damage;

(ii) General Liability insurance (including contractual liability coverage, together with any Umbrella Liability insurance), naming the Lessee and the Sublessee as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof, and (3) set forth in Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain provisions for a deductible amount or self-insured retention;

(iii) Workers' compensation insurance, disability benefits insurance and such other forms of insurance that 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, the Sublessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; the Lessee shall require that the Sublessee and all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law and at such time as the Lessee shall have employees, the Lessee shall provide such forms and type of insurance as well;

(iv) During any period of construction, renovation, improvement or reconstruction of any of the Facility, the Lessee shall cause its general contractor or any subcontractor to maintain liability insurance as a primary insured, and naming the Lessee and the Agency as additional insureds, in a minimum amount of \$5,000,000 (or such lesser amount agreed upon by the Agency upon written request by the Lessee) on a "per project aggregate limit" (or any functional equivalent) for bodily and personal injury claims, which insurance shall also cover claims against the Lessee and/or the Agency for negligence by a contractor and for negligence of subcontractors hired by the contractor or subcontractors, and for any vicarious liability of the Lessee and/or the Agency arising from such contractor's or subcontractor's negligent activity; and

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

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

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

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

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

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

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

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

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

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

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

(e) The Lessee shall deliver or cause to be delivered to the Agency the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the execution and delivery of this Agreement, (A) a broker's

certificate of coverage, confirming that the Lessee, as of the date of closing, has obtained Specific Coverage in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance, and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

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

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

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

Section 4.7 Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen,

ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel 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 or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

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 among the Agency, the Lessee and those authorized to exercise such right, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

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

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

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

(b) In the event a Loss Event shall occur, the Lessee shall

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

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

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

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

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

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

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

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating

- (i) the date of such completion,
- (ii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function,
- (iii) that the Agency has good and valid leasehold title to all property constituting part of the Facility and all property of the Facility is subject to the Company Lease, this Agreement and the Sublease Agreement, subject to Permitted Encumbrances, and
- (iv) that the restored Facility is ready for occupancy, use and operation for its intended purposes.

Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights against third parties of the Lessee or the Sublessee that exist at the date of such certificate or that may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

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

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

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

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

(i) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgage with respect to insurance proceeds and condemnation awards, which Mortgage shall control the use of insurance proceeds and condemnation awards. The obligations of the Lessee hereunder shall be independent of any such other obligation relating to insurance proceeds and condemnation awards.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) the Lessee is not the surviving, resulting or transferee entity and (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) unless the Agency shall otherwise consent (such consent not to be unreasonably withheld or delayed), has a positive net worth (as determined in accordance with generally accepted accounting principles and certified by an independent certified public accountant reasonably acceptable to the Agency) after the merger, consolidation, sale or transfer of not less than ninety percent (90%) of the net worth of the Lessee immediately prior to such merger, consolidation, sale or transfer, and (D) assumes in writing all of the obligations of the Lessee contained in this Agreement and the other Project Documents to which the Lessee is a party, (E) the Lessee delivers to the Agency an opinion of counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (F) delivers to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency, provided that if any modification to such form of Required Disclosure Statement is not acceptable to the Agency

acting in its sole discretion, then the Lessee shall be in default under this Agreement. The Lessee further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any entity succeeding to the rights of the Lessee under this Agreement shall be and continue to be duly qualified to do business in the State.

The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be owned to the extent of at least 51% of its voting and equity interests by the same individuals as shall own the membership or other equity interest in the Sublessee, and (z) continue to be duly qualified to do business in the State and that any legal entity succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State; provided however, that nothing contained in clause (y) above shall prohibit any such individual from effecting a transfer of a voting or equity interest in the Lessee to members of his immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, or as the direct result of an award of equitable dissolution (or similar award) and/or a settlement agreement concluded in a bona fide transaction as a result of, or arising from, a marital dissolution

Section 6.2 Indemnity. (a) The Lessee shall at all times indemnify, defend, protect and hold the Agency, and any director, member, officer, employee, servant or agent (excluding for this purpose the Lessee, which is not obligated hereof to indemnify its own employees, affiliated companies or affiliated individuals) thereof and persons under the Agency's control or supervision, and the PILOT Depository (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from September 11, 2007, the date the Agency adopted its inducement resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), and, arising from, upon, about or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing of the costs of the Facility or Project,
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

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

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

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

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

(viii) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined in Section 6.2(d) hereof) that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, or

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

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

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to Lessee or its affiliates for, any Claims or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof. 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. However, 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 if (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (y) the Lessee's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (i) the Indemnified Party shall not have timely notified the Lessee of any such claim or action, (ii) the Lessee shall not have knowledge or notice of such claim or action, and (iii) the Lessee's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Lessee's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c)(i) In addition to and without being limited by any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that (A) the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and, (B) except as set forth in a certain Phase I Environmental Site Assessment, prepared by Nova Consulting Group, Inc., dated August 10, 2007, a true and correct copy of which the Lessee has delivered to the Agency (the "Audit"), to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(ii) Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

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

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

(v) In the event the Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility so that the conditions of the Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Facility.

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

(d) For purposes of this Section 6.2, the term "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

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

(f) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) with respect to the financing of the Project, (3) under the Project documents, and (4) under Section 6.2(c) hereof to the extent not available to the Lessee at commercially reasonable rates). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(g) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities that the Lessee may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

Section 6.3 Compensation and Expenses of the Agency. The Lessee shall pay the fees, costs and expenses of the Agency together with any fees and disbursements

incurred by the Agency's Project Counsel and the Agency's general counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

On the Commencement Date, the Lessee shall pay to the Agency its fee of \$87,323.00 (said amount representing an amount of \$89,023.00 for the financing fee, plus an amount of \$800.00 for the administrative fee, less an application fee of \$2,500), payment of which has been received on the Commencement Date. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$800.00 (subject to an adjustment up or down based on changes in the Consumer Price Index as of each November, utilizing a base year of 2003) payable upon each anniversary of the Commencement Date until the termination of this Agreement. For purposes of this Section, "Consumer Price Index" shall mean the Consumer Price Index for all Urban Consumers (CPI-U), for the region New York - Northern N.J. - Long Island, NY - NJ - CT - PA (1982-84 = 100, unless otherwise noted), as published by the U.S. Department of Labor Bureau of Labor Statistics.

Section 6.4 Retention of Leasehold Title to Facility; Grant of Easements; Release of Facility. (a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its leasehold estate in the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

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

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Agency the release of and removal from this Agreement and the leasehold estate created hereby and by the Company Lease and the Sublease Agreement of any unimproved part of the Land (on which none of the Improvements is situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Lessee, the Agency shall, at the sole cost and expense of the Lessee, execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility and convey leasehold title thereto to the Lessee, subject to the following: (i) any liens, easements, encumbrances and reservations to which title to said

property was subject at the time of recording of this Agreement; (ii) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (iii) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Encumbrances (other than the lien of this Agreement); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless there shall be delivered to the Agency a certificate of an Authorized Representative of the Lessee, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Facility so proposed to be released and the release of such portion of the Facility is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

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

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

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or interest in this Agreement, the Sublease Agreement, or the Company Lease of the Agency or the Lessee or the Sublessee or against any of the Rental Payments

payable under this Agreement or under the Sublease Agreement or the Company Lease, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Sublessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

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

Section 6.7 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND THE SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND 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 6.8 Financial Statements; No-Default Certificates. (a) Upon request of the Agency, the Lessee shall deliver or cause to be delivered to the Agency, a copy

of the most recent annual reviewed financial statements of the Lessee, the Sublessee and of their subsidiaries, if any (including balance sheets as of the end of such fiscal year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles consistently applied, with an audit opinion of an independent certified public accountant reasonably acceptable to the Agency; provided that if the Lessee does not prepare such statements, Lessee shall provide such financial statements on a compilation basis, and such statements will have been compiled or reviewed by a certified public accountant.

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

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

Section 6.9 Employment Information, Opportunities and Guidelines. (a) The Lessee and the Sublessee agree to submit to the Agency on August 1st of each year a completed Employment and Benefits Report in the form of Schedule B – “Employment and Benefits Report” attached hereto to the extent that the Lessee and the Sublessee shall have received Financial Assistance (as such term is defined in the Employment and Benefits Report) from the Agency during the twelve-month period ending on the June 30th immediately preceding such August 1st. Annually, by July 31 of each year, commencing on

July 31, 2008, until the termination of this Agreement, the Lessee shall submit to the Agency the contact and location report substantially in the form attached hereto as Schedule C.

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

(c) The Lessee (on behalf of itself and the Sublessee) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee, the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. In addition, upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee or the Sublessee which is pertinent to the Lessee, the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 of 2005 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or by the Sublessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. The Lessee further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Lessee, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, as amended

from time to time, or any of the Project Documents. This authorization shall remain in effect throughout the term of this Agreement.

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

(e) Additionally, the Lessee shall submit to the Agency, together with Schedule B referred to above, a letter of representation that there are no existing tenants at the Project other than the Lessee and the Sublessee.

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

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

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

Section 6.13 Subtenant Survey. The Lessee shall file with the Agency by January 1 of each year, commencing January 1, 2008, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form attached hereto as Schedule D.

Section 6.14 Current Facility Equipment Description. The Lessee covenants and agrees that throughout the term of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of the Appendices to this Agreement to be an accurate and complete description of all current items of Facility Equipment. To this end, the Lessee covenants and agrees (i) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (ii) that no item of Facility Equipment shall be delivered and installed at the Facility as part of the Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in the Appendices attached as part of this Agreement, and the Lessee shall from time to time prepare and deliver to the Agency supplements to such Appendix in

compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties.

Section 6.15 Certain Continuing Representations. It at any time during the term of this Agreement, the representation or warranty made by the Lessee pursuant to Section 1.5(a) hereof, would, if made on any date during the term of this Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Lessee shall be deemed to be in default under this Agreement unless the Agency shall, upon written request by the Lessee, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material respect.

Section 6.16 Signage at Project Site. Upon commencement of renovations and construction at the Facility (including but not limited to the commencement of any demolition and/or excavation, the Institution shall erect at the Facility, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the "Sign"):

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DEVELOPMENT AGENCY
Mayor Michael Bloomberg**

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Agency in writing or electronically; and (ii) the minimum size of the sign shall be four feet by eight feet; and (iii) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Premises until completion of the renovations and construction. The Institution may erect other signs in addition to the Sign.

Section 6.17 Environmental Covenants. The Lessee hereby covenants and agrees with the Agency that if any renovation or construction disturbs any material which may be suspected asbestos containing material, the Lessee shall, at its sole cost and expense, prior to commencement of such renovation and/or construction, survey, test and remove all asbestos-containing materials, if any, from the Facility and undertake any remediation related to the removal of such materials, so as to comply with New York State Department of Environmental Conservation ("NYSDEC"), New York City Department of Environmental Protection ("NYCDEP") rules and regulations and all other applicable Legal Requirements appertaining thereto. The Lessee further covenants and agrees that if asbestos is present that the Lessee shall prepare, develop and implement an asbestos operations and maintenance plan. The Lessee shall provide to the Agency evidence acceptable to the Agency of such testing, removal and remediation, if any, conforming to applicable NYSDEC and NYCDEP rules and regulations and all other applicable Legal Requirements within six (6) months from the Commencement Date.

Section 6.18 Undertaking to Provide Architect's Certificate. The Lessee hereby covenants and agrees to provide the Agency with notice of the appointment of an architect with respect to the Project by January 15, 2008. The Lessee further covenants and agrees to provide the Architect's Certificate in the form attached hereto as Schedule H promptly upon the retention of an architect by the Lessee, but in no event later than two (2) weeks from receipt of the notice referred to in the previous sentence.

Section 6.19 Undertaking to Provide General Contractor's Certificate. The Lessee hereby covenants and agrees to provide the Agency with notice of the appointment of a general contractor with respect to the Project by January 15, 2008. The Lessee further covenants and agrees to provide the General Contractor's Certificate in the form attached hereto as Schedule I promptly upon the retention of a general contractor by the Lessee, but in no event later than two (2) weeks from receipt of the notice referred to in the previous sentence; provided, however, that if the Lessee shall decide not to engage a general contractor in connection with the Project, then the Lessee shall notify the Agency of such decision by January 15, 2008 and shall provide the Agency with a certificate of a professional, reasonably acceptable to the Agency, which certificate shall be substantially in the form attached hereto as Schedule I, and which professional may be the architect providing the certificate set forth in Section 6.18 hereof. The Lessee hereby agrees that in no event shall any construction or renovation begin until such notice and the Architect's Certificate and General Contractor's Certificate have been delivered.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 2.4, 4.3, 4.4, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.12, 6.13, 6.14, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(ii) Failure of the Lessee to observe and perform any covenant or agreement on its part to be performed under Section 4.5 hereof and continuance of such failure for a period of fifteen (15) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the

Lessee of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, the Sublessee or any other Guarantor, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee, the Sublessee or any other Guarantor or of all or any substantial part of its or his respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any final order for relief against the Lessee, the Sublessee or any other Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or the Sublessee or any other Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof, Section 7 of the Sublease Agreement, or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made (i) by the Lessee, the Sublessee, or any Guarantor in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by or on behalf of the Lessee or the Sublessee or any Guarantor herein or in any of the other Project Documents, or (iii) in the Letter of Representation and Indemnity Agreement delivered by the Guarantors to the Agency, or (iv) by or on behalf of the Lessee or the Sublessee or any Guarantor or any other Person in any Required Disclosure Statement, or (v) by or on behalf of the Lessee or the Sublessee or any Guarantor in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to foreclose any Mortgage or other material lien on or security interest in the Facility;

(h) Any loss of leasehold title by the Agency to the Facility;

(i) An "Event of Default" under the Sublease Agreement, the Guaranty Agreement, any mortgage, including the Mortgage, with respect to the Facility, or the Mortgage Note shall occur and be continuing; or

(j) An appointment of a receiver with respect to the Facility as specified in the Mortgage.

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

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, a termination of lease, and the Lessee hereby waives delivery and acceptance of such termination of lease as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination of lease;

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

(c) 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;

(d) The Agency may require the Lessee to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount that the Lessee would otherwise be required to pay if it were the owner of the Facility Realty exclusive of the Agency's leasehold interest therein; or

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

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as

expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty without the benefit of the Agency's leasehold interest in the Facility), 6.2, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

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

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

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

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

ARTICLE VIII

OPTIONS; RECAPTURE OF BENEFITS

Section 8.1 Options. (a) The Lessee shall have the option to purchase the Agency's interest in the Facility upon sixty (60) days prior written notice to the Agency and to terminate this Agreement on any date during the term hereof by paying all Rental Payments due hereunder accruing with respect to the period ending on the date of termination. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to an Authorized Representative of the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such purchase and termination is to be made. In addition, the Lessee shall purchase the Agency's interest in the Facility on the scheduled expiration date of this Agreement by paying on such date any and all Rental Payments then due hereunder.

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

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

Section 8.2 Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's 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 (i) documents conveying to the Lessee all of the Agency's right, title and interest in and to the Facility and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty without the benefit of the Agency's leasehold interest in the Facility), 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3 [Reserved].

Section 8.4 Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the PILOT Expiration Date, and upon receipt of sixty (60) days prior written notice of the Agency, the Lessee shall in connection with termination of this Agreement, pay the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee shall accept a termination of lease in recordable form and such termination shall become effective forthwith 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 without the benefit of the Agency's leasehold interest in the Facility), 6.2, 8.5, and 9.13 hereof. In the event the Lessee does not record the termination of lease with respect to the Facility and terminate this Agreement within such 60 day period, then, commencing on the 61st 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 recorded the termination of lease with respect 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 entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(i) If there shall occur a Recapture Event during the Recapture Period (as those terms are defined below), but such Recapture Event is prior to the Operations Commencement Date (defined hereinbelow), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits (as defined below); and (ii) interest described in subsection (ii)(c) and (if applicable) (d) immediately below.

(ii) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the date on which the Project shall have been substantially completed (which shall be the earlier of (y) the completion date set forth in Section 2.2 hereof, or (z) the date stated in the certificate of an Authorized Representative of the Lessee delivered to the Agency pursuant to Section 2.2 hereof)(such earlier date to be referred to as the "**Operations Commencement Date**"), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts (as applicable) upon demand by the Agency:

- a. If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.
- b. Except to the extent permitted in Section 6.1, if the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations

Commencement Date, X percent of the Benefits where "X" is a percent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs.

- c. The principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date of the Agency's demand; such that (x) Benefit principal comprising mortgage recording taxes shall be deemed to have accrued to the Lessee on the Closing Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax saving shall be deemed to have accrued to the Lessee on each date upon which such sales and/or use tax saving shall have been exempted by reason of the use by the Lessee of the Sales Tax Letter, provided, however, that if the Lessee cannot establish to the Agency's satisfaction the applicable date of receipt, the Agency shall deem the date of receipt (and therefore the date on which the Benefit principal accrued) to be the first day of the calendar year for which exemption was reported by the Lessee to the State Department of Taxation and Finance on Form ST-340, or, if the Lessee shall have failed to file Form ST-340, the Closing Date.
- d. In addition to the interest payable pursuant to "c" preceding, the principal of the Benefits to be recaptured, whether pursuant to "a" or "b" preceding, and whether related to real estate tax savings or not, if not paid to the Agency upon demand, shall from the date of demand bear interest calculated at the rate and compounded in the same manner as the interest imposed by the City's Department of Finance on the delinquent payments of real estate taxes; *provided, however*, that the effective rate of such interest shall not exceed the maximum interest permitted by law.
- e. For purposes of this subsection (ii) and subsection (i) of this Section 8.5, demand for payment by the Agency shall be made in accordance with the notice requirements of this Agreement

and the due date for payment shall be not less than seven (7) business days from the date of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

(g) The Lessee or the Sublessee shall have relocated all or substantially all of its operations at the Facility Realty to another site; *provided, however, and notwithstanding the foregoing*, such relocation shall not be a Recapture Event (as defined herein) if (i) the Lessee and the Sublessee have relocated their operations at the Facility Realty and at least 90% of their employees employed at the Facility Realty prior to the relocation, to another site within the City; and (ii) the Lessee and the Sublessee maintain, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Lessee and the Sublessee at the Facility Realty prior to relocation; and (iii) the Lessee and/or the Sublessee shall satisfy such other additional conditions as the Agency may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Lessee and/or the Sublessee to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Agency shall have the right to demand payment of all amounts due under subsection (i) preceding, and the calculation of interest pursuant to subsection (ii)(c) of this Section 8.5 shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Agency deems satisfactory in its sole discretion.

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

(A) shall have arisen as a direct, immediate result of (x) *force majeure* as defined in this Agreement, or (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee, the Sublessee, or any Affiliate, or

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

(iv) The Lessee covenants and agrees to furnish the Agency with written notification of any Recapture Event within ten (10) days of its occurrence and shall

subsequently provide to the Agency in writing any additional information that the Agency may request.

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

ARTICLE IX

MISCELLANEOUS

Section 9.1 Force Majeure. In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the Rental Payments required under the terms hereof, or to comply with Sections 4.5 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

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

Section 9.2 Priority. Pursuant to the Mortgage, the Agency and the Lessee will grant to the Mortgagee a mortgage lien on and a security interest in the Mortgaged Property (as defined in the Mortgage) as security for the payment of amounts due under the

Mortgage Note. This Agreement shall be subject and subordinate to the Mortgage and to such mortgage lien and security interest so created thereby; provided, however, that nothing in the Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Lessee.

Section 9.3 Assignment or Sublease. (a) The Lessee shall not at any time (y) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (z) sublet the whole or any part of the Facility, except to the Sublessee pursuant to the Sublease Agreement, without the prior written consent of the Agency (such consent to take into consideration the Agency's policies as in effect from time to time), and provided that:

(i) the Lessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the sublease shall not cause the Facility to cease being an Approved Facility and a "project" under the Act;

(ii) the Lessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) any assignee or transferee of the Lessee or any sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and shall have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any assignee, transferee or sublessee shall utilize the Facility as an Approved Facility and a qualified "project" within the meaning of the Act;

(v) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty percent (20%) of the Facility would be subleased by the Lessee;

(vii) 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 Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any Guarantor under the Guaranty Agreement;

(viii) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease;

(ix) any such assignee, transferee or sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency; provided that if any modification to form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement; and

(x) each such sublease shall contain such other provisions as the Agency may reasonably require.

The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) Any consent by the Agency 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 consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

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

(d) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall not be unreasonably withheld), amend, modify, terminate or assign, or suffer any amendment, modification, termination or assignment of, the Sublease Agreement or any sublease entered into in accordance with this Section.

(e) The limitations in this Section 9.3 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and sub-subletting in whole or in part of the Facility.

(f) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee shall complete and execute such survey and questionnaire and return the same to the Agency.

Section 9.4 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto; provided, however, that no amendment pertaining directly or indirectly to the rights, powers or privileges of the Mortgagee shall be effective without the consent of the Mortgagee.

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

(a) if to the Agency, to the Executive Director, New York City Industrial Development Agency, 110 William Street, 4th Floor, New York, New York 10038 with a copy to the General Counsel of the Agency at the same address, and

(b) if to the Lessee, to Proxima & Kim, LLC, 109-05 178th Street, Jamaica, New York 11433, Attention: Hyon Chung Kim, Sole Member, with a copy to Samuel B. Freed, Esq., 98-20 Metropolitan Avenue, Forest Hills, New York 11375-6628 and Samuel S. H. Ahne, Esq., 1220 Broadway, Suite 502, New York, New York 10001.

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

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

The Agency shall deliver to the Mortgagee a copy of any notice of default or notice of its intent to convey its leasehold interest in the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be delivered at the same time and in the same manner as such notice is required to be given to the Lessee, addressed as follows:

To the Mortgagee, to Genworth Financial Commercial Mortgage Warehouse LLC, 6620 West Broad Street, Building 3, Richmond, Virginia 23230, Attention: Philip Hart, Vice President and Assistant Secretary, with a copy to Gebhardt & Smith LLP, One South Street, Suite 2200, Baltimore, Maryland 21202-3281, Attention: Mark A. Gaspar.

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

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

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

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

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

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

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

Section 9.13 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

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

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

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

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

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

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

Section 9.16 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on November 20, 2007.

ARTICLE X

EXEMPTION FROM MORTGAGE RECORDING TAXES

Section 10.1 Definitions. Terms used in this Article X but not defined herein shall have the meanings provided below:

Gap Mortgage means, upon any refinancing of the outstanding principal balance of the indebtedness secured by the Mortgage, the separate mortgage that will initially secure New Money.

New Money means, upon any refinancing of the outstanding principal balance of the indebtedness secured by the Mortgage, any additional loan proceeds that may be advanced as part of such mortgage refinancing.

Mortgage Recording Taxes means those taxes imposed by the City and the State upon the recording of mortgages against real property in the City.

Non-Exempt Principal means that portion of the indebtedness secured by the Mortgage that may be outstanding on the Expiration Date or on any earlier termination of this Agreement, as the context requires.

PILOMRT means payment(s) in lieu of mortgage recording taxes as such payments are calculated using the mortgage recording tax rate in effect at time of payment.

NPV means a net-present-value calculation of an amount due at a future date.

NPV-PILOMRT means the net-present-value calculation of a PILOMRT due at the Expiration Date.

Section 10.2 Applicability of Exemptions. (a) Lessee acknowledges that the Agency has exempted the Mortgage from the payment of Mortgage Recording Taxes for a term, such term to commence on the date of the Mortgage and to end on the earlier to occur of (i) the Expiration Date or sooner termination of this Agreement, or (ii) the maturity or sooner termination of the Mortgage.

(b) Lessee acknowledges and agrees that the Agency is not obligated to exempt the recording of any mortgage from the payment of Mortgage Recording Taxes other than the Mortgage; nor is the Agency obligated to exempt from the payment of Mortgage Recording Taxes any extension, modification or other amendment to, or any assignment, consolidation or restatement of the Mortgage.

(c) The Agency agrees that, if in connection with the refinancing of the Mortgage the Lessee causes the Bank to assign the Mortgage to a new lender and thereby causes the Mortgage (as assigned) to continue to be exempt from Mortgage Recording Taxes, the

Agency will not object to such assignment, provided that (i) the Agency is made a party to the Mortgage as so assigned and modified, and (ii) the Mortgage, as so assigned and modified, has provisions reasonably required by the Agency, and (iii) New Money, if any, is initially secured by a Gap Mortgage, and (iv) the Lessee makes the following payments (as applicable) at the time of refinancing to the City's Department of Finance:


- (i) Mortgage Recording Taxes with respect to any Gap Mortgage; and
- (ii) NPV-PILOMORT with respect to any Non-Exempt Principal less the amount of any principal for which Mortgage Recording Taxes and/or PILOMORT and/or NPV-PILOMORT have already been paid or are being concurrently paid.

(d) If this Agreement terminates prior to the Expiration Date and, as a result, there is Non-Exempt Principal, Lessee shall either pay PILOMORT with respect to such Non-Exempt Principal or deliver in-lieu thereof a satisfaction of the Mortgage to the Agency.

(e) Lessee agrees that, notwithstanding delivery by the Lessee of a satisfaction of the Mortgage on the Expiration Date or on any earlier date when this Agreement may be terminated, the Agency shall not be obligated to refund to the Lessee any amounts of PILOMORT or NPV-PILOMORT previously paid.

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

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Maureen P. Babis
Title: Executive Director

PROXIMA & KIM, LLC

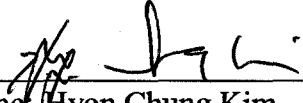
By: _____
Name: Hyon Chung Kim
Title: Sole Member

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

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY


By: _____
Name: Maureen P. Babis
Title: Executive Director

PROXIMA & KIM, LLC

By:  _____
Name: Hyon Chung Kim
Title: Sole Member

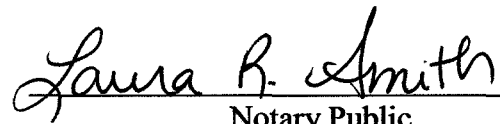
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 13 day of November, 2007, before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/The City of New York, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2011

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

On the 15th day of November, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Hyon Chung Kim, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LAURA R. SMITH
Notary Public, State of New York
Registration #: 01SM6174422
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires 9/17/20 11

APPENDICES

EXHIBIT A

DESCRIPTION OF THE LAND

All that certain plot or parcel of land situate, lying and being in the Fourth ward of the Borough and County of Queens, City and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of 178th Street distant 397.94 feet Northwesterly from the corner formed by the intersection of the Northeasterly side of 178th Street with the Northwesterly side of Brinkerhoff Avenue;

RUNNING THENCE northwesterly along the Northeasterly side of 178th Street 197.40 feet;

THENCE North 31 degrees 49 minutes 40 seconds East at right angles to 178th Street, 250 feet the land of the Jamaica Water Supply Company;

THENCE South 58 degrees 10 minutes 20 seconds east parallel with 178th Street, and along the said land of the Jamaica Water Supply Company 197.40 feet;

THENCE South 31 degrees 49 minutes 40 seconds West 250 feet to the Northeasterly side of 178th Street to the point or place of BEGINNING.

EXHIBIT B

FACILITY EQUIPMENT

The acquisition of building materials and fixtures for incorporation within the building located at 109-05 178th Street, Jamaica, New York 11433.

EXHIBIT C

PROJECT COST BUDGET

USES OF FUNDS.....

Land and Building Acquisition	\$7,075,000
Renovations	\$ 428,000
Closing Costs	<u>\$ 130,000</u>
	\$7,633,000

EXHIBIT D

[FORM OF SALES TAX LETTER]

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION

NOVEMBER 20, 2007

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(Proxima Inc. Project)

Expiration Date: November 30, 2008

Eligible Location: 109-05 178th Street, Jamaica, New York 11433

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on October 9, 2007 and a certain Lease Agreement, dated as of November 1, 2007 (the "Lease Agreement"), between the Agency and Proxima & Kim, LLC, a New York limited liability company (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building on an approximately 51,220 square foot parcel of land, generally known as 109-05 178th Street, Jamaica, New York 11433, Block 10336 and Lot 160, all for use in the Sublessee's wholesale cosmetic distribution business (the "Project"), for use and occupancy by the Company and its permitted sublessee, Proxima Inc., a New York business corporation (the "Sublessee").

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, renovation and equipping of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for purpose of (a) purchasing or leasing materials, equipment, machinery, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Exhibit A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to

time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the acquisition, renovation and equipping of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Exhibit B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Exhibit B

5. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the acquisition, renovation and equipping of the Project, shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by [Identify the Company or Agent] _____, a _____ (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 Proxima & Kim, LLC, a New York limited liability company (the "Company") consisting of the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building on an approximately 51,220 square foot parcel of land, generally known as 109-05 178th Street, Jamaica, New York 11433, Block 10336 Lot 160 all for use as a wholesale cosmetic distribution business (the "Project"). The [purchase, lease, rental, use] of the [materials, machinery, equipment, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to [*insert name and address of vendor* (the "Vendor")] shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Company or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization

for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

6. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

7. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company is strictly for the purposes above stated.

8. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 2.2 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Lessee of notice from the Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the "Termination Date"), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Exhibit B and in the Agency Agreement referred to therein.

9. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the expiration of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for annual renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency

shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

10. The Agency further appoints the Sublessee its agent for purposes of using the Facility.

The signature of a representative of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee have accepted the terms hereof.

NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY

Name Maureen P. Babis
Title: Executive Director

ACCEPTED AND AGREED TO BY:

PROXIMA & KIM, LLC

By: _____
Name: Hyon Chung Kim
Title: Sole Member

PROXIMA INC.

By: _____
Name: Hyon Chung Kim
Title: President

EXHIBIT A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements.** With respect capital improvements to the Facility:

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility;

(b) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

(ii) **Personal Property.** With respect to tangible personal property to be used or installed for permanent use (for the useful life of such item) at the Facility and which does not constitute a capital improvement: purchases or leases of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more, including mainframe computers (and peripherals), personal computers, telecommunications equipment, business machines and software, but excluding motor vehicles that are licensed by the Department of Motor Vehicles for use on public highways or streets, fine art, plants, objects d'art and other similar decorative items, and ordinary office supplies such as pencils, paper clips and paper.

(iii) **Services.** With respect the eligible items identified in (i)(a) and (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

EXHIBIT B

FORM ST-60--REQUIRED PROCEDURES

Introduction. Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

Required Procedures. In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form-ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

2. "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* _____ dated _____, 200__ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, the Letter of Authorization for Sales Tax Exemption attached as Exhibit A [*attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company*].
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Exhibit B).

- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility). If the Agent fails to comply with the foregoing requirement, the Agent 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 Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:
 - i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or

breach has been waived in writing by the Agency or the City, as the case may be;

- ii. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- iii. has been convicted of a felony in the past ten (10) years;
- iv. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- v. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

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

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

“Person” shall mean any individual or any entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent’s Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company’s status as agent of the Agency shall result in the immediate termination of the Agent’s status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf into the address bar of your internet

browser and saving the "fill-in" PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to Compliance@nycedc.com.

3. The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.



ADDENDUM A
New York State Department of Taxation and Finance
IDA Appointment of Project Operator or Agent
For Sales Tax Purposes

ST-60
(7/02)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ()	
City	State	ZIP code	
Name of IDA project operator or agent	Check box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address	Telephone number ()	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City	State	ZIP code	
Name of project		Purpose of project (see instructions)	
Street address of project site			
City	State	ZIP code	
Description of goods and services intended to be exempted from sales and use taxes			
Date project operator or agent appointed	mm dd yyyy	Date project operator or agent status ends	mm dd yyyy
Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:			
Print name of officer or employee signing on behalf of the IDA		Print title	
Signature	Date	Telephone number ()	

Instructions

Filing requirements

An IDA must file this form within 30 days of the date the IDA designates a project operator or appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the new agent's appointment. The IDA need not file this form for people hired to work on an IDA project who are not appointed as agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

Purpose of project

For Purpose of project, enter one of the following:

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

Mailing instructions

Mail completed form to: **NYS Tax Department, IDA Unit, Building 8 Room 738, W A Harriman Campus, Albany NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.

Business tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

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

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

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).

Internet access: www.tax.state.ny.us

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 Contact Center, W A Harriman Campus, Albany NY 12227.

SCHEDULE A**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 PROXIMA & KIM, LLC, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(d) of that certain Lease Agreement, dated as of November 1, 2007 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project was _____, _____.

(ii) 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 applicable];

(iii) 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) the Agency has good and valid marketable leasehold title to the Facility, and all property constituting the Facility is subject to the Company Lease, the Lease Agreement, and the Sublease Agreement, subject only to Permitted Encumbrances;

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

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

(vii) this Certificate is given without 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;

(viii) 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 or temporary 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, (d) a Final Project Cost Budget, and (e) evidence that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 of the Lease Agreement in respect of the Facility Realty have been paid in full.

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

PROXIMA & KIM, LLC, as Lessee

By: _____
Name: _____
Title: _____

SCHEDULE B**EMPLOYMENT & BENEFITS REPORT**

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **July 15, 20__**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

Please provide your NAICS Code (see <http://www.naics.com/search.htm>)

If you cannot determine your NAICS Code, please indicate your industry type

1. Number of permanent Full-Time Employees as of June 30, 20__

2. Number of non-permanent Full-Time Employees as of June 30, 20__

3. Number of permanent Part-Time Employees as of June 30, 20__

4. Number of non-permanent Part-Time Employees as of June 30, 20__

5. Number of Contract Employees as of June 30, 20__

6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 20__.

7. Number of employees included in item 6 above who reside in the City of New York

8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? ☐ Yes ☐ NoDo the Company and its Affiliates offer health benefits to all Part-Time Employees? ☐ Yes ☐ No

If the answer to item 6 above is fewer than 250 employees, please skip questions 9 through 13 and continue with questions 14 through 17.

9. Number of employees in Item 6 who are "Exempt"

10. Number of employees in Item 6 who are "Non-Exempt"

11. Number of employees in item 10 that earn up to \$25,000 annually

12. Number of employees in item 10 that earn \$25,001 - \$40,000 annually

13. Number of employees in item 10 that earn \$40,001 - \$50,000 annually

For Items 14 through 16, indicate the value of the benefits realized at Project Locations during FY ' __.

14. Value of sales and use tax exemption benefits \$

15. Value of Commercial Expansion Program ("CEP") benefits \$

16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$

17a. Were physical improvements made to any Project Location during FY ' __ at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? ☐ Yes ☐ No

17b. If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s) please provide the ICIP application number(s) #

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

Entity Name:

Signature By: Date:

Name (print): Title:

■ ■ ■ ■ ■



New York City
Industrial Development Agency

DEFINITIONS & INSTRUCTIONS

For the Fiscal Year July 1, 20__ – June 30, 20__ (FY ' __)

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to a Project Agreement.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

"Financial Assistance" is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) or New York City Public Utility Service (NYCPUS) program.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

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

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

"Tenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

ITEM

INSTRUCTIONS

For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement.

Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Tenant.

- 1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 20__ and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**
5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.
- 6-14. Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.
9. Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.
10. Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.
14. Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a 501(c)3 exemption.
15. Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit <http://www.nyc.gov/dof>.
16. Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit <http://www.nyc.gov/dof>.

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SCHEDULE C

New York City
Industrial Development Agency

LOCATION & CONTACT INFORMATION

For the Fiscal Year July 1, 20__ – June 30, 20__

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits.

Project Address

Floor

Borough

Zip Code

Type of Benefit (Pilot, Sales Tax, etc.)

*** Please use additional pages if necessary ***

Please provide below current Project Contact Information: (Please print CLEARLY)

Project Name: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Signature: _____

Backup Contact Information:

Name: _____ Title: _____ Phone: _____

Please mail to:

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

OR FAX YOUR RESPONSE TO: (212) 618-5738

QUESTIONS? Please contact the Compliance Helpline at (212) 312-3963
or email ComplianceReporting@nycdc.com

SCHEDULE D

ida

SUBTENNANT OCCUPANCY SURVEY

*Please complete a separate occupancy survey for each project building.

Please complete a separate occupancy survey for each property on Exhibit A. In the event that multiple blocks & lots affect only one property location, please note this on Exhibit A

PROJECT COMPANY: _____

PROJECT LOCATION: _____

<u>Occupant</u>	<u>Name of Occupant's Principal</u>	<u>Square Footage Occupied</u>	<u>Affiliate Relationship to Company, if any</u>	<u>Date Occupancy Began</u>	<u>Date Occupancy Will End</u>
1.					
2.					
3.					
4.					
5.					

(Please continue on a separate page if necessary)

____ Check here if no Persons other than the Company occupy, sublease and/or license space at the Project Location

TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: _____ square feet

I, the undersigned, hereby certify that the information reported above is true, correct and complete as of **January 1, 20__** and that the occupants listed above are the only occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

Name: _____

Signature: _____

Phone Number: _____

Title: _____

Date: _____

Email: _____

(Please print CLEARLY)

Please fax the **completed** request to: NYC IDA Compliance Dept. (212) 618-5738
 Or mail to: NYC IDA Attention: Compliance Dept. 3rd Floor 110 William Street New York, NY 10038

NYC IDA Compliance Hotline: (212) 312-3963 or Email: Compliance@nycedc.com

SCHEDULE E

ST-340 Annual Report of Sales and Use Tax Exemptions

New York State Department of Taxation and Finance



**Annual Report of Sales and Use Tax Exemptions
Claimed by Agent/Project Operator of
Industrial Development Agency/Authority (IDA)
For Period Ending July 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			
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 (<i>specify</i>)			
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 Months			
7 Total sales and use tax exemptions (actual tax savings; NOT total purchases)		7 \$	
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator		Title of person signing	
Signature		Date	

Failure to file a complete report annually may result in the removal of authority to act as an IDA agent/project operator. Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, BLDG 8 RM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227.

General information

Who must file?

The General Municipal Law (CML) 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) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include, on Form ST-340, information obtained from such contractors, subcontractors, consultants, and agents, as described below.

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.

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): 1 800 634-2110 (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.

Project information

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

Name of IDA agent/project operator

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

Name of IDA agent/project operator's authorized representative

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

Name of IDA

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

Name of project

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

Line instructions

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

Line 2 — Enter the date the project started <this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance>. Include month, day, and year.

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

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

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

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

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter '0') as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes 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

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.

SCHEDULE F

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

None

SCHEDULE G

[FORM OF REQUIRED DISCLOSURE STATEMENT]

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

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

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

Except as set forth on Exhibit A attached hereto, all of which exceptions so set forth being subject to approval of the Agency within its sole and unlimited discretion:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be;

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

(ii) has been convicted of a felony in the past ten (10) years;

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

(iv) has received a written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

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

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

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

Person shall mean any individual or entity, whether a trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

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

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

[NAME OF CERTIFYING ENTITY]

By: _____
Name:
Title:

SCHEDULE H

FORM OF ARCHITECT'S CERTIFICATE

[DATE]

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

Re: New York City Industrial Development Agency Project to assist with the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of an approximately 55,000 square foot building on an approximately 51,220 square foot parcel of land, located at 109-05 178th Street, Jamaica, Queens, New York 11433 (the "Premises")

To Whom It May Concern:

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

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

1. The Architect prepared and supervised the preparation of the Plans and Specifications.
2. All of the Improvements are located within the boundaries of the Premises and in accordance with all "set-back" requirements. To my knowledge after due inquiry, limited to a review of the Title Report, issued on _____ by Stewart Title Insurance Company (the "Title Report") and the survey of the Premises, dated _____, prepared by _____ (the "Survey"), the location of the Improvements, if constructed substantially in accordance with the Plans and Specifications, will not be affected by any existing easements affecting the Premises, nor will the Improvements be located within or encroach into any easement area, nor shall the location of the Improvements violate any restriction, condition or covenant affecting the Premises.

3. The Plans and Specifications comply with all applicable federal, state and municipal laws, ordinances, rules and regulations regarding zoning, building and fire codes and ordinances. To my knowledge after due inquiry, limited to a review of the Title Report and the Survey, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will likewise comply with all covenants, conditions, easements and restrictions to which the Improvements are subject.
4. The Premises is zoned in accordance to the NYC Zoning Ordinance and such zoning classification permits the construction of the Improvements and the as contemplated in the Plans and Specifications and the intended use of the Premises by the Project Company.
5. The Premises [will include, as contemplated by the Plans and Specifications] on-site parking sufficient][does not require any additional on-site parking] to satisfy all zoning and other governmental requirements. Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Premises, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans and Specifications. No easements over land of others is called for or indicated by the Plans and Specifications for access or egress to the Premises or parking on the Premises, or for any such facilities or utilities, and design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Plans and Specifications.
6. Water, sewer, drainage, gas, electric, telephone and other utilities required for the development and operation of the Improvements are available or have been included in the Plans and Specifications of sufficient design and capacity to meet the requirements of the Improvements.
7. The Premises constitutes one legally subdivided zoning lot (Block 10336, Lot 160) separate from any other parcel of real property.
8. The Budget (with projected draw schedule) attached hereto as Exhibit C is complete and accurately reflects the correct, anticipated cost and projected timing of construction of the Improvements as designed. The amounts set forth in the Budget are adequate and sufficient for satisfying all fees and expenses of Architect in designing the Improvements.
9. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.
10. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules,

permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

11. Architect is an architect duly licensed to practice architecture in the State of New York.

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

Very truly yours,

By _____
Name:
Title:

EXHIBIT A

1. The Improvements

The term "Improvements" as used herein shall mean a building with an aggregate total of 55,000 rentable square feet .

2. The Architects Contract

Contract dated _____, 20____, between Project Company, as owner,
and [_____], as architect.

EXHIBIT B

LIST OF PLANS AND SPECIFICATIONS

EXHIBIT C

BUDGET

SCHEDULE I

FORM OF GENERAL CONTRACTOR'S CERTIFICATE

[DATE]

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

Re: New York City Industrial Development Agency Project to assist with the acquisition, renovation and equipping of an industrial facility (the "Facility"), consisting of the acquisition, renovation and equipping of an approximately 55,000 square foot building on an approximately 51,220 square foot parcel of land thereon located at 109-05 178th Street, Jamaica, Queens, New York 11433 (the "Premises")

To Whom It May Concern:

The undersigned (["Construction Manager"] ["General Contractor"]) understands that New York City Industrial Development Agency is providing financial assistance to Proxima Inc. (the "Project Company"), which financial assistance will be used to assist the Project Company with the construction of the improvements described as: the acquisition, renovation and equipping of an approximate aggregate total of 55,000 square feet (the "Improvements") on the Premises (the "Project"). [Construction Manager/General Contractor] has been engaged to act as the [construction manager/general contractor] in connection with the construction the Improvements pursuant to the provisions of a certain contract between the Project Company and the [Construction Manager/General Contractor] dated [] (the "Contract"). The Construction Manager/General Contractor has reviewed certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in the Architect's Certification, dated [], by [], the architect for the Project.

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

1. All permits, licenses, certificates, consents and approvals required in connection with the commencement of construction of the Improvements, including but not limited to, curb-cut permits, building permits and permits relating to utilities, have been duly, validly and unconditionally issued by the appropriate governmental agencies (federal, state and local) and private authorities and agencies.

2. The following are the approvals, authorizations, permits or licenses currently issued that are necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations:

- | | |
|----------------------------|--|
| • Zoning | Department of Buildings |
| • New Building | Department of Buildings |
| • Sewer Permit | Department of Environmental Protection |
| • Sprinklers | Department of Buildings |
| • Standpipe | Department of Buildings |
| • Generator | Department of Buildings |
| • Paving Plan | Department of Buildings |
| • Street Opening | Department of Transportation |
| • Asbestos Control Program | Department of Environmental Protection |

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

- | | |
|---------------|-------------------------|
| • Fire Alarm | Department of Buildings |
| • Tenant Work | Department of Buildings |
| • Electrical | Department of Buildings |
- [List all other applicable items]

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

4. The Plans and Specifications for the renovation of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.
5. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

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

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

Very truly yours,

By _____
Name:
Title:

**NYC
RPT****NEW YORK CITY DEPARTMENT OF FINANCE
REAL PROPERTY TRANSFER TAX RETURN**
(Pursuant to Title 11, Chapter 21, NYC Administrative Code)**GRANTOR ▼**

● Name **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

● Grantor is a(n): ☐ individual ☐ partnership (must complete Schedule 3) Telephone Number
(check one) ☐ corporation ☒ other **212-619-5000**

● Permanent mailing address after transfer (number and street) **110 WILLIAM STREET**

● City and State **NEW YORK, NY** Zip Code **10038**

● EMPLOYER IDENTIFICATION NUMBER **13-2906040** OR ● SOCIAL SECURITY NUMBER

GRANTEE ▼

● Name **PROXIMA & KIM, LLC**

● Grantee is a(n): ☐ individual ☐ partnership (must complete Schedule 3) Telephone Number
(check one) ☐ corporation ☒ other **718-360-9667**

● Permanent mailing address after transfer (number and street) **109-05 178TH STREET**

● City and State **JAMAICA, NY** Zip Code **11433**

● EMPLOYER IDENTIFICATION NUMBER **32-0216712** OR ● SOCIAL SECURITY NUMBER

DO NOT WRITE IN THIS SPACE
FOR OFFICE USE ONLY

● RETURN NUMBER ▲

● DEED SERIAL NUMBER ▲

● NYS REAL ESTATE TRANSFER TAX PAID ▲

PROPERTY LOCATION ▼

LIST EACH LOT SEPARATELY. ATTACH A RIDER IF ADDITIONAL SPACE IS REQUIRED

Address (number and street)	Apt. No.	Borough	Block	Lot	# of Floors	Square Feet	Assessed Value of Property
109-05 178TH STREET		QUEENS	10336	160	1	51,324	2,178,000.00

● DATE OF TRANSFER TO GRANTEE: **11/20/2007** ● PERCENTAGE OF INTEREST TRANSFERRED: **100** %

CONDITION OF TRANSFER ▼ See Instructions

● Check (✓) all of the conditions that apply and fill out the appropriate schedules on pages 5-11 of this return. Additionally, Schedules 1 and 2 must be completed for all transfers.

- a. ☐ Arms length transfer
- b. ☐ Transfer in exercise of option to purchase
- c. ☐ Transfer from cooperative sponsor to cooperative corporation
- d. ☐ Transfer by referee or receiver (complete Schedule A, page 5)
- e. ☐ Transfer pursuant to marital settlement agreement or divorce decree
- f. ☐ Deed in lieu of foreclosure (complete Schedule C, page 6)
- g. ☐ Transfer pursuant to liquidation of an entity (complete Schedule D, page 6)
- h. ☐ Transfer from principal to agent, dummy, strawman or conduit or vice-versa (complete Schedule E, page 7)
- i. ☐ Transfer pursuant to trust agreement or will (attach a copy of trust agreement or will)
- j. ☐ Gift transfer not subject to indebtedness
- k. ☐ Gift transfer subject to indebtedness
- l. ☐ Transfer to a business entity in exchange for an interest in the business entity (complete Schedule F, page 7)
- m. ☐ Transfer to a governmental body
- n. ☐ Correction deed
- o. ☐ Transfer by or to a tax exempt organization (complete Schedule G, page 8)
- p. ☐ Transfer of property partly within and partly without NYC
- q. ☐ Transfer of successful bid pursuant to foreclosure
- r. ☐ Transfer by borrower solely as security for a debt or a transfer by lender solely to return such security
- s. ☐ Transfer wholly or partly exempt as a mere change of identity or form of ownership. Complete Schedule M, page 9)
- t. ☐ Transfer to a REIT or to a corporation or partnership controlled by a REIT. (Complete Schedule R, pages 10 and 11)
- u. ☒ Other transfer in connection with financing (describe):
TRANSFER IN CONNECTION WITH NYCIDA FINANCING.
- v. ☐ Other (describe):

● TYPE OF PROPERTY (✓)	
a. <input type="checkbox"/>	1-3 family house
b. <input type="checkbox"/>	Individual residential condominium unit
c. <input type="checkbox"/>	Individual cooperative apartment
d. <input type="checkbox"/>	Commercial condominium unit
e. <input type="checkbox"/>	Commercial cooperative
f. <input type="checkbox"/>	Apartment building
g. <input type="checkbox"/>	Office building
h. <input checked="" type="checkbox"/>	Industrial building
i. <input type="checkbox"/>	Utility
j. <input type="checkbox"/>	OTHER. (describe):

● TYPE OF INTEREST (✓)	
Check box at LEFT if you intend to record a document related to this transfer. Check box at RIGHT if you do not intend to record a document related to this transfer.	
REC.	NON REC.
a. <input type="checkbox"/>	Fee <input type="checkbox"/>
b. <input type="checkbox"/>	Leasehold Grant <input checked="" type="checkbox"/>
c. <input type="checkbox"/>	Leasehold Assignment or Surrender <input type="checkbox"/>
d. <input type="checkbox"/>	Easement <input type="checkbox"/>
e. <input type="checkbox"/>	Development Rights <input type="checkbox"/>
f. <input type="checkbox"/>	Stock <input type="checkbox"/>
g. <input type="checkbox"/>	Partnership Interest <input type="checkbox"/>
h. <input type="checkbox"/>	OTHER. (describe): <input type="checkbox"/>

SCHEDULE 1 - DETAILS OF CONSIDERATION ▼

COMPLETE THIS SCHEDULE FOR ALL TRANSFERS AFTER COMPLETING THE APPROPRIATE SCHEDULES ON PAGES 5 THROUGH 11. ENTER "ZERO" ON LINE 11 IF THE TRANSFER REPORTED WAS WITHOUT CONSIDERATION.

1. Cash.....	● 1.	0 00
2. Purchase money mortgage.....	● 2.	0 00
3. Unpaid principal of pre-existing mortgage(s).....	● 3.	0 00
4. Accrued interest on pre-existing mortgage(s).....	● 4.	0 00
5. Accrued real estate taxes	● 5.	0 00
6. Amounts of other liens on property	● 6.	0 00
7. Value of shares of stock or of partnership interest received	● 7.	0 00
8. Value of real or personal property received in exchange.....	● 8.	0 00
9. Amount of Real Property Transfer Tax and/or other taxes or expenses of the grantor which are paid by the grantee	● 9.	0 00
10. Other (describe):	● 10.	0 00
11. TOTAL CONSIDERATION (add lines 1 through 10 - must equal amount entered on line 1 of Schedule 2) (see instructions)	● 11.	0 00

See instructions for special rules relating to transfers of cooperative units, liquidations, marital settlements and transfers of property to a business entity in return for an interest in the entity.

SCHEDULE 2 - COMPUTATION OF TAX ▼

A. Payment	Pay amount shown on line 14 - See Instructions	Payment Enclosed
1. Total Consideration (from line 11, above).....	● 1.	0 00
2. Excludable liens (see instructions).....	● 2.	0 00
3. Consideration (Line 1 less line 2).....	● 3.	0 00
4. Tax Rate (see instructions).....	● 4.	0 %
5. Percentage change in beneficial ownership (see instructions)	● 5.	100 %
6. Taxable consideration (multiply line 3 by line 5)	● 6.	0 00
7. Tax (multiply line 6 by line 4)	● 7.	0 00
8. Credit (see instructions).....	● 8.	0 00
9. Tax due (line 7 less line 8) (if the result is negative, enter zero).....	● 9.	0 00
10. Interest (see instructions).....	● 10.	0 00
11. Penalty (see instructions).....	● 11.	0 00
12. Total Tax Due (add lines 9, 10 and 11).....	● 12.	0 00

GRANTOR'S ATTORNEY ▼



Name of Attorney NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION		Telephone Number (212) 619-5000	
Address (number and street) 110 WILLIAM STREET ATTN: LEGAL DEPARTMENT		City and State NEW YORK, NY	Zip Code 10038
EMPLOYER IDENTIFICATION NUMBER	<input type="text"/> - <input type="text"/>	OR	SOCIAL SECURITY NUMBER
			<input type="text"/> - <input type="text"/> - <input type="text"/>

GRANTEE'S ATTORNEY ▼

Name of Attorney SAMUEL B. FREED, ESQ.		Telephone Number (718) 261-5343	
Address (number and street) 98-20 METROPOLITAN AVENUE		City and State FOREST HILLS, NY	Zip Code 11375
EMPLOYER IDENTIFICATION NUMBER	<input type="text"/> - <input type="text"/>	OR	SOCIAL SECURITY NUMBER
			<input type="text"/> - <input type="text"/> - <input type="text"/>

CERTIFICATION ▼

I swear or affirm that this return, including any accompanying schedules, affidavits and attachments, has been examined by me and is, to the best of my knowledge, a true and complete return made in good faith, pursuant to Title 11, Chapter 21 of the Administrative Code and the regulations issued thereunder.

GRANTOR		GRANTEE	
Sworn to and subscribed to		Sworn to and subscribed to	
before me on this <u>13</u> day	EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER	before me on this <u>15</u> day	EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER
of <u>November 2007</u>		of <u>November 2007</u>	
Name of Grantor		Name of Grantee	
Signature of Notary	Signature of Grantor	Signature of Notary	Signature of Grantee
 <p>FRANCES TUFANO Notary Public, State of New York No. 01TU5080131 Qualified in Queens County Commission Expires June 16, ____</p>		 <p>LAURA R. SMITH Notary Public, State of New York Registration #: 01SM6174422 Qualified in Monroe County Certificate Filed in Monroe County Commission Expires 9/17/20____</p>	
<p>GRANTEES: To ensure that your property and water/sewer tax bills are sent to the proper address you must complete the Registration forms included in this packet. Owner's Registration Cards can also be obtained by calling the Department of Finance at (718) 935-9500.</p>			

WORKSHEET FOR CONDITIONS 1(a) and 1(b)

1. Add lines 1, 2, 7, 8, 9 and 10 from Form NYC-RPT, Schedule 1 and enter total here.....1. \$ _____
- 2 a. Enter total number of REIT shares receiveda. _____
- b. Enter maximum number of REIT shares into which ownership interests may be convertedb. _____
- c. Add lines a and b.....c. _____
- d. Enter offering price per share of REIT shares on the date of the transaction reported.....d. _____
- e. Multiply line 2c by line 2de. _____
- f. Enter value of ownership interests received not convertible into REIT sharesf. _____
- g. Add lines e and f2g. _____
3. Multiply line 1 by .40 for condition 1(a) or .50 for condition 1(b)3. _____
- If line 3 is greater than line 2g, the transaction does not qualify as a REIT transfer. DO NOT FILE THIS SCHEDULE. You must file Form NYC-RPT and compute your tax due on Schedule 2.
- If line 3 is less than or equal to line 2g, the transaction will qualify as a REIT Transfer, provided the other conditions are met. You should complete Form NYC-RPT substituting on line 4 of Schedule 2:
- .5% instead of 1%;
 - .7125% instead of 1.425%;
 - 1.3125% instead of 2.625%

SEE INSTRUCTIONS TO DETERMINE WHICH TAX RATE APPLIES**Instructions for Completing Worksheet****LINE 1**

Where the value of the underlying property transferred or interest therein is used in determining the consideration for a REIT Transfer, you may, but are not required to, report as the value of the real property or interest therein (Form NYC-RPT, Schedule 1, line 7), the estimated market value as determined by the Department of Finance as reflected on the most recent Notice of Assessment issued by the Department. (See *Statements of Audit Procedure 93-2-GCT/RPTT, 3/1/93 and 95-1-GCT/RPTT, 7/28/95*) Add to the amount reported on line 1 the amount of any mortgages and other liens and encumbrances created in contemplation of the formation of the REIT in the case of condition 1(a) or in contemplation of the transaction reported on this Schedule R in the case of condition 1(b).



LINE 2

If the grantor received REIT shares as consideration for the transfer, enter on line 2a the number of REIT shares received. If

the grantor received interests in a partnership or corporation controlled by the REIT that may be converted into REIT shares, enter on line 2b the maximum number of REIT shares into which such interests may be converted and attach an explanation of the terms of the conversion. If the grantor received interests that may be converted into REIT shares but you believe that the offering price for the REIT shares into which such interests may be converted is not a proper measurement of the value of the interests received, do not complete line 2b. Instead, attach an explanation of the terms of the conversion and enter on line 2f the fair market value of the interests received. If the grantor received interests in a partnership or corporation controlled by the REIT that cannot be converted into REIT shares at any time, enter on line 2f the fair market value of the interests received. If you enter an amount on line 2f, attach an explanation of the method used for determining the value of the interests received.

CERTIFICATION

I swear or affirm under penalties of perjury that the grantor has no present intention to transfer or convey the REIT shares or interests in a partnership or corporation controlled by the REIT received by the grantor as consideration in the transaction reported on this Schedule R within two years of the date of the transfer, other than a distribution of such shares or interests to the partners or shareholders of the grantor, and that, to the best of my knowledge, condition 3 above regarding the use of the cash proceeds of the REIT offering will be satisfied, if applicable. I further swear or affirm that I will file an amended Form NYC-RPT and pay any additional tax due if any such transfer or conveyance occurs within such two-year period or if condition 3 above, if applicable, ceases to be met.

GRANTOR		GRANTEE	
<p>Sworn to and subscribed to</p> <p>before me on this _____ day</p> <p>of _____,</p>	<p>_____</p> <p>Name of Grantor</p>	<p>Sworn to and subscribed to</p> <p>before me on this _____ day</p> <p>of _____,</p>	<p>_____</p> <p>Name of Grantee</p>
<p>Signature of Notary</p>	<p>Signature of Grantor</p>	<p>Signature of Notary</p>	<p>Signature of Grantee</p>
			



Recording office time stamp

New York State Department of Taxation and Finance

**Combined Real Estate
Transfer Tax Return,
Credit Line Mortgage Certificate, and
Certification of Exemption from the
Payment of Estimated Personal Income Tax**

See instructions (TP-584-I) before completing this form. Please print or type.

Schedule A — Information relating to conveyance

<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Grantor/Transferor	Name (if individual; last, first, middle initial)	NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY		Social security number
		Mailing address	110 WILLIAM STREET		Social security number
		City	State	ZIP code	Federal employer ident. number
	NEW YORK	NY	10038	13 2906040	
<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Grantee/Transferee	Name (if individual; last, first, middle initial)	PROXIMA & KIM, LLC		Social security number
		Mailing address	109-05 178TH STREET		Social security number
		City	State	ZIP code	Federal employer ident. number
	JAMAICA	NY	11433	32 0216712	

Location and description of property conveyed

Tax map designation			Address	City/village	Town	County
Section	Block	Lot	109-05 178TH STREET	NEW YORK		QUEENS
4	10336	160				

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house	5 <input checked="" type="checkbox"/> Commercial/Industrial	Date of conveyance <div style="border: 1px solid black; padding: 2px; display: inline-block;"> 11 20 2007 month day year </div>	Percentage of real property conveyed which is residential real property _____ 0 % <i>(see instructions)</i>
2 <input type="checkbox"/> Residential cooperative	6 <input type="checkbox"/> Apartment building		
3 <input type="checkbox"/> Residential condominium	7 <input type="checkbox"/> Office building		
4 <input type="checkbox"/> Vacant land	8 <input type="checkbox"/> Other _____		

Condition of conveyance (check all that apply)

- | | | |
|--|--|--|
| a. <input type="checkbox"/> Conveyance of fee interest

b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)

c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)

d. <input type="checkbox"/> Conveyance to cooperative housing corporation

e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identify or form of ownership or organization (attach Form TP-584.1, Schedule F)

g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)

h. <input type="checkbox"/> Conveyance of cooperative apartment(s)

i. <input type="checkbox"/> Syndication

j. <input type="checkbox"/> Conveyance of air rights or development rights

k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender

m. <input type="checkbox"/> Leasehold assignment or surrender

n. <input checked="" type="checkbox"/> Leasehold grant

o. <input type="checkbox"/> Conveyance of an easement

p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)

q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state

r. <input type="checkbox"/> Other (describe) _____ |
|--|--|--|

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B., Part I \$ _____		
	Schedule B., Part II \$ _____		

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Schedule B — Real estate transfer tax return (Tax Law, Article 31)**Part I — Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) ☒ **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)
- 3 Taxable consideration (subtract line 2 from line 1)
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3
- 5 Amount of credit claimed (see instructions and attach Form TP-584.1, Schedule G)
- 6 Total tax due* (subtract line 5 from line 4)

1.	0 00
2.	0 00
3.	0 00
4.	0 00
5.	0 00
6.	0 00

Part II — Computation of additional tax due on the conveyance of residential real property for \$1 million or more

- 1 Enter amount of consideration for conveyance (from Part I, line 1)
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A)
- 3 Total additional transfer tax due* (multiply line 2 by 1% (.01))

1.	0 00
2.	0 00
3.	0 00

Part III — Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) a ☐
- b. Conveyance is to secure a debt or other obligation b ☐
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance c ☐
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts d ☐
- e. Conveyance is given in connection with a tax sale e ☐
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f ☐
- g. Conveyance consists of deed of partition g ☐
- h. Conveyance is given pursuant to the federal Bankruptcy Act h ☐
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property i ☐
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment j ☐
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) k ☐
- l. Other (attach explanation) l ☒

*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

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TP - 584 Schedule B Explanation

ATTACHMENT

TRANSFER IN CONNECTION WITH NYCIDA FINANCING.

Schedule C — Credit Line Mortgage Certificate (Tax Law, Article 11)**Complete the following only if the interest being transferred is a fee simple interest.**

I (we) certify that: (check the appropriate box)

1. ☒ The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
- ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
- ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
- ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
- ☐ The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.





Please note: for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

☐ Other (attach detailed explanation).

3. ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
- ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
- ☐ A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City, make check payable to the **NYC Department of Finance**.)

Signature (both the grantor(s) and grantee(s) must sign)

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete.

	_____		_____
Grantor signature	Title	Grantee signature	Title
	_____		_____
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in New York City, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

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Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)

Complete the following only if a fee simple interest is being transferred by an individual or estate or trust.

Part I - New York State residents

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the property is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this property.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

Part II - Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must use Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, and pay the full amount of estimated tax, if any, to the recording officer at the time the deed is presented for recording.

Exemption for nonresident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property, the transferor(s)/seller(s) (grantor) of this property was a nonresident of New York State, but is not required to pay estimated tax under Tax Law, section 663 due to one of the following exemptions:

- ☐ The property being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date _____ to _____ Date _____ (see instructions).
- ☐ The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- ☐ The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date