

Lease Agreement

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY,**

GROGAN REALTY LLC,

and

SWEET SAMS BAKING COMPANY, LLC

LEASE AGREEMENT

Dated as of August 1, 2004

\$6,100,000

New York City Industrial Development Agency
Federally Taxable Industrial Development Revenue Bonds, Series 2004
(Sweet Sams Baking Company, LLC Project)

Affecting that real property described in the
Description of Facility Realty in the appendices to this Lease Agreement,
in Bronx County, City and State of New York which is also known as
Block 3843, Lot 45 on the Official Tax Map of Bronx County

Record and Return to:
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes III, Esq.
File No.: 90570-183

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	DEFINITIONS AND REPRESENTATIONS	3
Section 1.1.	Definitions.	3
Section 1.2.	Construction.....	6
Section 1.3.	Representations and Warranties by Agency.	6
Section 1.4.	Findings by Agency.	7
Section 1.5.	Representations and Warranties by Lessee.....	7
ARTICLE II	THE PROJECT	9
Section 2.1.	The Project.....	9
Section 2.2.	Completion by Lessee.....	10
Section 2.3.	Issuance of Series 2004 Bonds, Application of Proceeds of Series 2004 Bonds.	11
Section 2.4.	Title Insurance.	11
Section 2.5.	Limitation on Sales Tax Exemption	11
ARTICLE III	LEASE OF FACILITY AND RENTAL PROVISIONS.....	15
Section 3.1.	Lease of the Facility.....	15
Section 3.2.	Duration of Term.	15
Section 3.3.	Rental Provisions; Pledge of Agreement and Rent.....	15
Section 3.4.	Obligation of Lessee Unconditional.	17
Section 3.5.	Grant of Security Interest.....	18
Section 3.6.	Right of Set-Off.	18
Section 3.7.	Payment of Purchase Price of Tendered Bonds.....	18
Section 3.8.	Letters of Credit; Fixed Rate Credit Facility.	19
Section 3.9.	Assignment of Sublease Agreement.....	21
ARTICLE IV	MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE.....	21
Section 4.1.	Maintenance, Alterations and Improvements.	21
Section 4.2.	Removal of Property of the Facility.....	23
Section 4.3.	Payment in Lieu of Real Estate Taxes.	24
Section 4.4.	Taxes, Assessments and Charges.....	29
Section 4.5.	Insurance.....	29
Section 4.6.	Advances by Agency or Bank.	31
Section 4.7.	Compliance with Law.....	32
ARTICLE V	DAMAGE, DESTRUCTION AND CONDEMNATION	33

Section 5.1.	Damage, Destruction and Condemnation	33
ARTICLE VI	PARTICULAR COVENANTS	36
Section 6.1.	Dissolution or Merger of Lessee; Restrictions on Lessee.....	36
Section 6.2.	Indemnity.....	36
Section 6.3.	Compensation and Expenses of Trustee.	39
Section 6.4.	Retention of Title to Facility; Grant of Easements; Release of Certain Land.	40
Section 6.5.	Financial Statements; No-Default Certificates.	41
Section 6.6.	Discharge of Liens.....	42
Section 6.7.	Agency's Authority; Covenant of Quiet Enjoyment.....	43
Section 6.8.	No Warranty of Condition or Suitability.	43
Section 6.9.	Amounts Remaining in Funds.	43
Section 6.10.	Issuance of Additional Bonds.	43
Section 6.11.	Non-Discrimination; Employment Information, Opportunities and Guidelines.....	44
Section 6.12.	Redemption Under Certain Circumstances; Special Covenants.....	45
Section 6.13.	Further Assurances.	46
Section 6.14.	Recording and Filing.	46
Section 6.15.	Right to Cure Agency Defaults.....	47
ARTICLE VII	EVENTS OF DEFAULT; REMEDIES.....	47
Section 7.1.	Events of Default.	47
Section 7.2.	Remedies on Default.....	49
Section 7.3.	Reletting of Facility.	50
Section 7.4.	Remedies Cumulative.....	50
Section 7.5.	No Additional Waiver Implied by One Waiver.....	50
Section 7.6.	Effect on Discontinuance of Proceedings.....	51
Section 7.7.	Agreement to Pay Attorneys' Fees and Expenses.	51
Section 7.8.	Rights of Bank.	51
ARTICLE VIII	OPTIONS.....	51
Section 8.1.	Options.....	51
Section 8.2.	Conveyance on Exercise of Option to Purchase.	54
Section 8.3.	Option to Purchase or Invite Tenders of Bonds.....	54
Section 8.4.	Termination of Agreement.....	55
Section 8.5.	Recapture of Agency Benefits.	55
ARTICLE IX	MISCELLANEOUS	57

Section 9.1.	Indenture; Amendment.....	57
Section 9.2.	Force Majeure.....	57
Section 9.3.	Assignment or Sublease.....	57
Section 9.4.	Priority of Indenture and Agency Mortgage.....	58
Section 9.5.	Benefit of and Enforcement by Trustee and Bank.....	59
Section 9.6.	Amendments.....	59
Section 9.7.	Notices.....	59
Section 9.8.	Prior Agreements Superseded.....	59
Section 9.9.	Severability.....	59
Section 9.10.	Inspection of Facility.....	59
Section 9.11.	Effective Date Counterparts.....	60
Section 9.12.	Binding Effect.....	60
Section 9.13.	Net Lease.....	60
Section 9.14.	Law Governing.....	60
Section 9.15.	Investment of Funds.....	60
Section 9.16.	Waiver of Trial by Jury.....	60
Section 9.17.	Reserved.....	61
Section 9.18.	No Recourse under this Agreement or on Bonds.....	61
Section 9.19.	Rights of Bank.....	61
Section 9.20.	Date of Agreement for Reference Only.....	61

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of August 1, 2004, by and between NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 110 William Street, New York, New York 10038, party of the first part, GROGAN REALTY LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York, having its principal place of business at 1261 Seabury Avenue, Bronx, New York and SWEET SAMS BAKING COMPANY, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York, having its principal place of business at 1261 Seabury Avenue, Bronx, New York, parties of the second part:

WITNESSETH:

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

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

WHEREAS, the Agency is further authorized by the Act to issue its special obligation bonds payable solely from and secured by the revenues derived from the leasing of the land, buildings and other improvements and the machinery and equipment so acquired; and

WHEREAS, to accomplish the purposes of the Act the Agency has entered into negotiations with the Lessee and with Sweet Sams Baking Company, LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of New York and affiliated with the Lessee (the "Sublessee") in connection with a project consisting of the acquisition of an approximately 79,000 square foot parcel of real property located at 1261 Seabury Avenue, Bronx, New York, and the renovation, equipping and improvement of an approximately 51,000 square foot building thereon ("the Facility") to be used by the Sublessee in the manufacture and distribution of baked goods (together with the Facility, the "Project), within The City of New York, and in furtherance of said purpose on June 8, 2004 the Agency adopted a resolution authorizing the Project, and the issuance of the Series 2004 Bonds (as hereinafter defined) to finance a portion of the cost of such Project (the "Bond Resolution") and thereupon to lease the Facility from the Lessee pursuant to a lease agreement, dated as of August 1, 2004 between the Agency and the Lessee (the "Company Lease Agreement") and to lease the Facility back to the Lessee pursuant to a Lease Agreement (as hereinafter defined) for subsequent sublease to the Sublessee (hereinafter defined); and

WHEREAS, the proceeds of the Series 2004 Bonds will be used to fund the acquisition of the Facility Realty and certain Facility Equipment and the Lessee and/or the Sublessee will use equity to finance the renovation and improvements to the Facility; and

WHEREAS, the Agency has determined that the Project is necessary to provide employment in, and is beneficial for the economy and prosperity of, the inhabitants of The City of New York and is reasonably necessary to induce the Lessee to proceed with the Project; and

WHEREAS, the Lessee has assigned the right to take title to the Facility to FAE Holdings 102696R, a Utah limited liability company acting as an Exchange Accommodation Titleholder (the "EAT"), for a period of up to 185 days in order to effect a like-kind exchange pursuant to Section 1031 of the Code, and the Lessee will lend the EAT the bond proceeds and other funds necessary to acquire title to the Facility, subject to a lease agreement from the EAT to the Lessee of a term not to exceed 185 days; and

WHEREAS, as a result of such negotiations the Lessee has requested the Agency to issue its Federally Taxable Industrial Development Revenue Bonds, Series 2004 (Sweet Sams Baking Company, LLC Project) (the "Series 2004 Bonds") in an aggregate principal amount of \$6,100,000 to finance a portion of the costs of the Project; and

WHEREAS, contemporaneously with the execution of this Lease Agreement, the Agency and the Trustee (hereinafter defined) have entered into an Indenture of Trust of even date herewith (the "Indenture") providing for, among other things, the issuance of the Series 2004 Bonds; and

WHEREAS, contemporaneously with the execution of this Lease Agreement, the Lessee and the Sublessee are entering into a Sublease Agreement of even date herewith (herein referred to as the "Sublease Agreement"), providing for the subleasing of the Facility by the Lessee to the Sublessee; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Series 2004 Bonds hereinafter mentioned, the Agency has authorized the issuance of the Series 2004 Bonds pursuant to the Act, the Bond Resolution and the Indenture; and

WHEREAS, the Lessee initially has entered into a Letter of Credit and Reimbursement Agreement of even date herewith (the "Letter of Credit and Reimbursement Agreement") with Citibank, N.A. (the "Bank") pursuant to which the Bank has issued an irrevocable transferable direct pay letter of credit in favor of the Trustee for the benefit of the Holders of the Bonds to secure the payment of the principal and Purchase Price of, and fifty-four (54) days of accrued interest on, the Series 2004 Bonds at an assumed interest rate of ten per centum (10%) per annum; and

WHEREAS, the payment of the Series 2004 Bonds and obligations of the Lessee to the Agency under the Lease Agreement and to the Bank under the Letter of Credit and Reimbursement Agreement, and the other Security Documents, are to be secured by, among other things, fee and leasehold mortgages on and security interests in the Facility and in the Collateral Premises to be granted by the Agency, the Lessee, the Sublessee and the EAT to the Trustee and the Bank; and

WHEREAS, in order to further secure the payment of the Series 2004 Bonds, the Lessee, the Sublessee and the Individual Guarantors have entered into the Guaranty Agreement of even date herewith, by the Lessee, the Sublessee and the Individual Guarantors in favor of the Trustee, whereunder

the Lessee, the Sublessee and the Individual Guarantors guarantee the payment of the principal and Purchase Price of, and redemption premium, if any, and interest on, the Series 2004 Bonds; and

WHEREAS, the Lessee shall have the right under this Lease Agreement to provide a substitute letter of credit for the then existing letter of credit pursuant to a reimbursement agreement with the issuer thereof, in which event said letter of credit shall be deemed the Letter of Credit and said reimbursement agreement shall be deemed the Letter of Credit and Reimbursement Agreement herein; and

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

SECTION 1.1. Definitions.

Terms not otherwise defined herein shall have the same meanings as used in the Indenture, the Sublease Agreement or the Guaranty Agreement hereinbelow defined. The following terms shall have the following meanings in this Lease Agreement:

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

Agency Mortgage shall mean the Agency Fee and Leasehold Mortgage and Security Agreement, dated as of August 1, 2004, from the Agency, the Lessee, the Sublessee and the EAT to the Trustee and the Bank, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith and creating first fee and leasehold mortgage liens, respectively, which shall encumber the Facility and the Collateral Premises.

Agreement shall mean this Lease Agreement dated as of August 1, 2004 between the Agency and the Lessee, and shall include any and all amendments and supplements thereto.

Authorized Representative shall mean (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director of the Agency or Vice President for Legal Affairs, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Lessee, or any other authorized manager of the Lessee so designated in writing to the Agency and the Trustee.

Bonds shall mean the Series 2004 Bonds and any Additional Bonds.

Code shall mean the Internal Revenue Code of 1986 including the regulations promulgated thereunder, and any successor codes, statutes or regulations.

Collateral Premises shall mean the premises located at 1049 Zerega Avenue, in Bronx, New York, as more particularly described in the Appendices to the Agency Mortgage.

Default Rate shall have the meaning ascribed thereto in the Letter of Credit and Reimbursement Agreement.

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

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

Facility shall mean the Facility Realty and the Facility Equipment.

Facility Equipment shall mean all fixtures, machinery, equipment, chattels and articles of personal property and all appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Facility Realty and/or the improvements located thereon or placed on any part thereof, though not attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and all other property used in connection with the production of income from the Facility Realty and/or the improvements located thereon or adapted for use therein, including, without limitation, any machinery, equipment and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto, but excluding Lessee's Property within the meaning of Section 4.1(c) hereof and all machinery, equipment and other personal property installed by the Institution prior to the date hereof or Existing Facility Property released pursuant to Section 4.2 hereof.

Facility Realty shall mean the land described in the Description of Facility Realty in Appendix B hereto, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Guaranty Agreement shall mean the Guaranty Agreement of even date herewith from the Company Guarantors and Individual Guarantors to the Trustee, and shall include any and all amendments thereof and supplements thereto.

Indenture shall mean the Indenture of Trust, dated as of August 1, 2004, by and between the Agency and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

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

Lessee shall mean (a) with respect to the Facility Realty constituting part of the Facility, Grogan Realty LLC and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof (including any surviving, resulting or transferee corporation as provided in Section 6.1 hereof) (the "Realty Lessee") and (b) with respect to the Facility Equipment constituting part of the Facility, Sweet Sams Baking Company, LLC, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof (including any surviving, resulting or transferee corporation as provided in Section 6.1 hereof) (the "Equipment Lessee").

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

Prohibited Person shall mean:

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

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

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

(d) any government, or Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United

States of America issued pursuant to the Trading with the Enemy Act of 1971, as amended (including the arms Export Control Act of 1979, as amended).

Project shall mean the acquisition and improvement of the Facility as more particularly described in the Description of Project in Appendix A attached hereto.

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

Series 2004 Bonds shall mean the \$6,100,000 Federally Taxable Industrial Development Revenue Bonds, Series 2004 (Sweet Sams Baking Company, LLC Project) of the Agency issued, executed, authenticated and delivered under the Indenture.

State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease Agreement, dated as the date hereof, by and between the Lessee and the Sweet Sams Baking Company, LLC, Sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms hereof.

Sublessee shall mean Sweet Sams Baking Company, LLC.

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

SECTION 1.2. **Construction.**

In this Agreement, unless the context otherwise requires:

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

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

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

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

SECTION 1.3. **Representations and Warranties by Agency.**

The Agency makes the following representations and warranties:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, and is authorized and empowered to enter into the transactions contemplated by this Agreement and to carry out its

obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement.

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2004 Bonds in the aggregate principal amount of \$6,100,000. The Series 2004 Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

SECTION 1.4. Findings by Agency.

The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the Project and the financing thereof by the Agency pursuant to the Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act and in furtherance of the Agency's policies for the promotion, encouragement and development of economically sound industry for the purpose of preventing unemployment and economic deterioration.

SECTION 1.5. Representations and Warranties by Lessee.

The Lessee makes the following representations and warranties:

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

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

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

(d) There is no action or proceeding pending or to the best of the Lessee's knowledge 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, each other Security Document to which it shall be a party and the Remarketing Agreement 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, each other Security Document to which the Lessee shall be a party and the Remarketing Agreement or in connection with the performance

of the obligations of the Lessee hereunder, under each of the Security Documents and under the Remarketing Agreement have been obtained.

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

(f) The completion of the Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee and Sublessee or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more of such plants or facilities of the Lessee and Sublessee or any other occupant or user of the Facility outside of the City.

(g) The total cost of the Project to the Lessee is in excess of \$6,100,000.

(h) No portion of the proceeds of the Series 2004 Bonds will be applied to acquire, construct, renovate, equip, expand or install any property which is not subject to this Agreement.

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

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

(k) This Agreement, the other Security Documents and the Remarketing Agreement to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

(l) Neither the Lessee nor any Affiliate of the Lessee is a Prohibited Person and no portion of the proceeds of the Series 2004 Bonds or any portion of the Project will be used or occupied by a Prohibited Person.

(m) As of the execution and delivery of this Agreement, there is no damage to any portion of the Facility from any fire or similar casualty, and to the best of its knowledge, there exists no proceeding or threat of proceeding in condemnation or eminent domain with respect to any portion of the Facility.

(n) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Lessee in connection with the execution and delivery of this Agreement, each other Security Document to which the Lessee is or shall be a party and the Remarketing Agreement or in connection with the conveyance of the Facility Realty by the Lessee to the Agency concurrently with the issuance and delivery of the Series 2004 Bonds, have been duly obtained.

(o) The Lessee is 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.

(p) The Project has been designed or will be designed, and the operation of the Project will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality; and the Lessee intends to operate the Facility or cause the Facility to be operated in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(q) The Project does not constitute a project (and the proceeds of the Bonds and the financial assistance to be provided by the Agency in connection therewith will therefore not be used for such a Project), in which facilities or property that are primarily used in making retail sales to customers who personally visit such facilities comprise more than one-third of the total cost of the Project. For purposes of this representation, "retail sales" shall mean: (i) sales by a registered vendor under article twenty-eight of the Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the Tax Law; or (ii) sales of a service to such customers.

(r) The Lessee shall not use, or permit any proceeds of the Series 2004 Bonds to be used, for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York.

ARTICLE II

THE PROJECT

SECTION 2.1. The Project.

(a) The Realty Lessee leases to the Agency at the time of the delivery and payment of the Series 2004 Bonds leasehold title to the Facility Realty free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2004 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture and the Equipment Lessee leases the Facility Equipment from the Agency.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2004 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project. A portion of the cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Lessee, the Lessee shall undertake to proceed with the Project to substantial completion. Project work shall be supervised by the Project Supervisor.

(d) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery of any instruments and documents and their filing and recording, 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(a) hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Lessee covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the completion of the Project and the operation of the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, including, with respect to the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement.

(f) The Lessee will extend to the Trustee and the Bank all vendors' warranties, if any, received by the Lessee in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform work with respect to the Project.

(g) The Lessee shall take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Construction Account of the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Reimbursement Account of the Lease Payments Fund for reimbursement to the Bank for amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement in connection with the redemption of Series 2004 Bonds pursuant to Section 2.04 of the Indenture (or, if the Letter of Credit is no longer in effect, in the Redemption Account of the Bond Fund) for the redemption of the Series 2004 Bonds pursuant to said section.

(h) Leasehold title to all materials, equipment, machinery and other property intended to be incorporated or installed as part of the Facility and purchased with proceeds of the Series 2004 Bonds shall vest in the Agency and be subject to the Agency Mortgage immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first. The Agency will not acquire leasehold title to any personalty and equipment not acquired with proceeds of the Series 2004 Bonds.

SECTION 2.2. Completion by Lessee.

(a) The Realty Lessee unconditionally covenants and agrees that it will acquire the Facility Realty not later than the date of delivery of the Series 2004 Bonds, the Equipment Lessee will acquire the Facility Equipment and the Realty Lessee and the Equipment Lessee unconditionally covenant and agree that they will complete the Project, or cause the Project to be completed, by February 1, 2006, and such completion will be effected in a first class workmanlike manner and in accordance with this Agreement and the Indenture and under the supervision of the Project Supervisor. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee, the Bank or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement. The Lessee shall pay all costs of acquisition of the Facility, both direct and indirect, when due, subject to the right to contest liens set forth in Section 6.6 hereof.

(b) The date of completion for the Project shall be evidenced to the Agency, the Bank and the Trustee by a certificate of an Authorized Representative of the Lessee (on the form set forth in Schedule E) stating, except for any costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee (i) the date of completion of the Project, (ii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, and (iii) that the Agency has leasehold title, subject only to Permitted Encumbrances, to all property constituting part of the Facility (which certification may be delivered in reliance upon a title insurance continuation update) and all property of the Facility is subject to this Agreement and the lien and security interest of the Agency Mortgage.

Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.02 of the Indenture, and (z) that no Person other than the Agency and the Trustee may benefit therefrom. The certificate of completion shall be accompanied by a temporary amended certificate of occupancy (if promptly replaced with a permanent amended certificate of occupancy prior to its expiration) or a permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement.

SECTION 2.3. **Issuance of Series 2004 Bonds, Application of Proceeds of Series 2004 Bonds.**

(a) Contemporaneously with the execution and delivery of this Agreement the Agency will sell and deliver the Series 2004 Bonds in the aggregate principal amount of \$6,100,000 under and pursuant to a resolution adopted by the Agency on June 8, 2004, authorizing the issuance of the Bonds under and pursuant to the Indenture. The proceeds of sale of the Bonds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the provisions of the Indenture. Pending such application, amounts in the Project Fund may be invested as provided in the Indenture.

SECTION 2.4. **Title Insurance.**

Prior to the delivery of the Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) title insurance in an amount not less than \$500,000 insuring the Agency's leasehold title to the Facility Realty against loss as a result of defects in the title of the Agency, (b) mortgagee title insurance in an amount not less than \$6,190,247 insuring the Trustee's and the Bank's interests under the Agency Mortgage as holder of a mortgage lien on the Facility Realty, in each case subject only to Permitted Encumbrances, and (c) a current survey of the site of the Facility Realty certified to the Agency, the Bank and Trustee. Any proceeds of such title insurance shall be paid to the Trustee for the benefit of the Bondholders and the Bank for deposit in the Renewal Fund and applied to remedy the defect in title. If not so capable of being remedied, in the opinion of the Bank (or if no Letter of Credit exists, the Trustee) or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Reimbursement Account of the Lease Payments Fund to be applied in connection with the redemption of Bonds pursuant to Section 2.04 of the Indenture (or, if the Letter of Credit is no longer in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) for the redemption of the Series 2004 Bonds pursuant to said section. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Trustee's or the Bank's interests as holders of a mortgage lien on the Facility Realty shall be paid to the Trustee and deposited by the Trustee in the Reimbursement Account of the Lease Payments Fund to be applied in connection with the redemption of Bonds pursuant to section 2.04 of the Indenture (or, if the Letter of Credit is no longer in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement, are paid in full, in the Redemption Account of the Bond Fund) for the redemption of the Series 2004 Bonds pursuant to said section.

SECTION 2.5. **Limitation on Sales Tax Exemption.** (a) Any exemption from Sales Taxes resulting from or occasioned by Agency involvement with the Project shall be limited to purchases of Eligible Materials effected in whole or in part from Bond proceeds or from the Lessee's equity, by or for the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project. The

Lessee shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earlier of (x) February 1, 2006, (y) the completion of the Project as provided in Section 2.2 hereof (z) receipt by the Lessee of notice from the Agency of the termination of the Sales Tax Letter, or (xx) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

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

“This contract is being entered into by Grogan Realty LLC, a limited liability company organized under the laws of the State of New York (the “Agent”), as agent for and on behalf of the New York City Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for Sweet Sams Baking Company, LLC (the “Company”), consisting of the acquisition of an approximately 79,000 square foot parcel of real property located at 1261 Seabury Avenue, Bronx, New York, and the renovation, equipping and improvement of an approximately 51,000 square foot building thereon (“the Facility”) to be used by the Company in the manufacture and distribution of baked goods (together with the Facility, the “Project”). The construction materials to be incorporated in the Facility 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 purchased and used 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 liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph.”

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, invoice, bill or purchase order to be, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that the Agency can confer, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, unless such claim was made in bad faith, in which case, with interest at eighteen percent (18%) per annum, from the date of such taking.

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

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2004 Bonds and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the completion of the Project as provided in

Section 2.2 hereof, (3) February 1, 2006 or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended 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 Project Costs for Eligible Materials for incorporation into the Facility Realty.

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

(C) shall only be available if that portion of the Project Cost for which the sales and use tax exemption is sought is paid for and/or reimbursed from the proceeds of the Series 2004 Bonds or from the Lessee's equity,

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

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

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

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

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

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

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

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

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.5(c)(iii) hereof, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum, unless such utilization was made in bad faith, in which case with interest at eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend to those Project Costs the payment for which shall first be made from the proceeds of the Series 2004 Bonds or from the Lessee's equity as well as to those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2004 Bonds or from the Lessee's equity.

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

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

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

(e) The Lessee shall on February 28, 2005 and on each February 28 thereafter until the completion of the term hereof file a statement with the New York State Department of Taxation and Finance, on a form (Form ST340 attached hereto as Schedule D or any successor or additional mandated form), and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement of filing with the New York State Department of Taxation and Finance, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to

the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. To the extent permitted by applicable law, the Lessee's status as agent of the Agency shall be re-instated upon the Lessee's compliance with the requirements hereof.

(f) The Lessee shall submit to the Agency on July 31, 2005 and each July 31 thereafter until the completion of the Project, a completed Benefits Report in form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on June 30 immediately proceeding such July 31.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

SECTION 3.1. Lease of the Facility.

The Agency hereby leases to the Realty Lessee, and the Realty Lessee hereby leases from the Agency, the Facility Realty for and during the term herein provided and upon and subject to the terms and conditions herein set forth and the Agency hereby leases the Facility Equipment to the Equipment Lessee. The Lessee shall at all times during the term of this Agreement occupy, use and operate the Facility as a manufacturing, warehouse and distribution facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Agreement. The Lessee shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto. The provisions of the foregoing sentence shall, to the extent permitted and required by law, survive termination of this Agreement.

SECTION 3.2. Duration of Term.

(a) The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on June 1, 2030, or such earlier or later date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility.

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

SECTION 3.3. Rental Provisions; Pledge of Agreement and Rent.

(a) The Lessee covenants and agrees to make rental payments in immediately available funds, which the Agency agrees shall be, and directs to be, paid by the Lessee directly to the Trustee for deposit into the Reimbursement Account of the Lease Payments Fund (i) on the first Business Day immediately preceding each March 1, June 1, September 1 and December 1 of each year with respect to

principal next due on the Bonds (other than such principal amount as shall become due as a mandatory Sinking Fund Installment payment), an amount equal to one-fourth (1/4) of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) on the date such principal is due; and (ii) on the first day of each month, commencing June 1, 2005, an amount equal to one-third (1/3) of the Sinking Fund Installment payments next due on the Bonds.

(b) The Lessee covenants and agrees that, during the term of the Initial Letter of Credit with respect to all Bonds and thereafter with respect to Bonds bearing interest other than in a Term Interest Rate Period, the Lessee shall make rental payments in immediately available funds, which the Agency agrees shall be paid by the Lessee directly to the Trustee for deposit into the Reimbursement Account of the Lease Payments Fund, on the Business Day next preceding each Interest Payment Date in an amount equal to the interest becoming due on such Bonds Outstanding on such Interest Payment Date, after crediting to such amount investment income earned on the Bond Fund during the preceding month and amounts, if any, to be transferred to the Lease Payments Fund from the Capitalized Interest Account of the Project Fund pursuant to Section 5.02(k) of the Indenture, which investment income or amounts so transferred are available for the payment of such interest. The Lessee further covenants and agrees that, after the term of the Initial Letter of Credit with respect to Bonds bearing interest in a Term Interest Rate Period, the Lessee shall make rental payments on the first (1st) day of each month (or the next succeeding Business Day if such day is not a Business Day), which the Agency agrees shall be paid directly by the Lessee to the Trustee for deposit into the Lease Payments Fund in an amount equal to one-twelfth (1/12) of the interest becoming due on such Bonds Outstanding at a Term Interest Rate, on the next Interest Payment Date, in each case after crediting to such amount investment income earned on the Bond Fund during the preceding month and amounts, if any, to be transferred to the Lease Payments Fund from the Capitalized Interest Account of the Project Fund pursuant to Section 5.02(k) of the Indenture, which investment income or amounts so transferred are available for the payment of such interest. On the same Business Day as the Bank makes payment in accordance with the terms of the Letter of Credit, and so long as the Trustee has sufficient funds in the Reimbursement Account of the Lease Payments Fund, the Trustee shall wire, in same day, federal funds, the amount of the draw honored with respect to draws honored by the Bank under the Letter of Credit, at the account number and address designated by the Bank in writing.

(c) As security for the performance of its rental payment obligations with respect to the Series 2004 Bonds and not in limitation of its obligations under Sections 3.3(a) and (b) above, the Lessee shall, simultaneously with the issuance and delivery of the Series 2004 Bonds, arrange for the delivery of the Letter of Credit to the Trustee. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal and Purchase Price of, Sinking Fund Installments for, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture).

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

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

(f) The Lessee shall have the option to prepay its rental obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds. For so long as the Letter of Credit is in effect, any partial prepayments shall be made in the manner provided in the Reimbursement Agreement.

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

(h) No further rental payments need be made to the Agency during the term of this Agreement when and so long as the amount of cash and/or Government Obligations on deposit in the Bond Fund (which, so long as a Letter of Credit for the Bonds is required, must be Priority Amounts) is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in Section 10.01 of the Indenture.

(i) The Lessee and the Agency acknowledge their intention to minimize the risk that any payment made to a Bondholder, so long as a Letter of Credit is in effect, from amounts provided by or on behalf of the Lessee may be determined by a bankruptcy court to constitute a preference. To this end the parties agree that, as and to the extent provided in Section 5.06(a) of the Indenture, payments to Bondholders shall be made only from Priority Amounts, except when and to the extent no Priority Amounts are available for the purpose, and payment obligations of the Lessee under Sections 3.3(a), (d), (e), (f) and (h) hereof are subject in all respects to the use of Priority Amounts for the payment of the Bonds. Optional prepayments permitted by the Lessee as provided in Article VIII hereof may not be made except from Priority Amounts.

(j) Pursuant to the Indenture and the Agency Mortgage, the Agency shall grant a lien on and security interest in the Facility (excluding any furniture, fixtures and equipment not paid for with proceeds of the Series 2004 Bonds) prior to the lien of this Agreement, and pledge and assign to the Trustee on behalf of the Bondholders and the Bank as security for the Bonds and payment of amounts owed or owing to the Bank under the Letter of Credit and Reimbursement Agreement all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder and thereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Lease Payments Fund, in accordance with the Indenture. The Lessee hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement.

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

SECTION 3.4. Obligation of Lessee Unconditional.

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

SECTION 3.5. **Grant of Security Interest.**

In order to secure the payment of rentals and all the obligations of the Lessee hereunder, the Lessee hereby grants a security interest to the Agency in all of the Lessee's right, title, if any, and interest in and to the fixtures constituting part of the Facility Realty.

SECTION 3.6. **Right of Set-Off.**

The Lessee hereby grants to the Agency, the Trustee for the equal and ratable benefit of all Bondholders and the Bank a lien and right of set-off for all the Lessee's liabilities and obligations under this Agreement and the other Security Documents to which it is a party against all the deposits, credits and property of the Lessee and any collateral of the Lessee now or hereinafter in the possession, under the control of the Agency, the Trustee and the Bank, and agrees that the same may be applied against such liabilities and obligations at any time after an Event of Default has occurred under this Agreement; provided, however, the Lessee shall have no right of set-off as to monies due and owing to the Bank under the Bank Documents (as such term is defined in the Letter of Credit and Reimbursement Agreement), and neither the Trustee nor the Agency shall have a right of set off against funds held by the Trustee for the benefit of the Bank in the Reimbursement Account of the Lease Payments Fund, so long as the Bank is honoring draws under the Letter of Credit in accordance with its terms..

SECTION 3.7. **Payment of Purchase Price of Tendered Bonds.**

(a) The Lessee agrees to cause to be paid to the Trustee, in accordance with Section 3.7(b) hereof, on each day on which a payment of the Purchase Price of a Series 2004 Bond becomes due, all amounts which, together with other moneys held by the Trustee under the Indenture and available therefor, shall be necessary for the payment of such Purchase Price when due under the Indenture. Each such payment by the Lessee to the Tender Agent in accordance with this Section shall be in immediately available funds and paid to the Tender Agent at its principal office on each Purchase Date.

(b) The Lessee shall provide for the payment of the amount to be paid pursuant to this Section 3.7 by delivery of the Letter of Credit to the Trustee, simultaneously with the issuance and delivery of the Series 2004 Bonds. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent necessary to make such payments when due. The obligation of the Lessee pursuant to this paragraph shall be deemed satisfied and discharged to the extent of any corresponding drawing made by the Trustee on the Letter of Credit and applied to such payment.

(c) The Lessee shall, at its discretion, either (i) directly pay to the Bank amounts sufficient to reimburse the Bank for any amounts drawn on the Letter of Credit to pay the Purchase Price of any Series 2004 Bond; provided, however, the Lessee shall notify the Trustee of any and all amounts paid directly to the Bank pursuant to this section 3.7(c)(i); or (ii) pay to the Trustee for deposit into the Reimbursement Account of the Lease Payments Fund amounts sufficient to reimburse the Bank by the close of business on a Business Day for any amounts drawn on the Letter of Credit to pay the Purchase Price of any Series 2004 Bond; provided, however, that the Lessee shall make such payment in immediately available funds by no later than 12:00 noon, New York City time, on such Business Day; provided, further, that if reimbursement for such amounts is due and payable under the Letter of Credit and Reimbursement Agreement, amounts in the Reimbursement Account of the Lease Payments Fund shall be transferred to the Bank, with a simultaneous notice of such transfer to the Lessee.

(d) The Lessee hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Bonds tendered for purchase thereunder. The Lessee shall have all of the rights and obligations provided in the Indenture with respect to the Lessee in connection with such transactions and the appointment of the Tender Agent and the Remarketing Agent thereunder. The Agency shall have no obligation or responsibility with respect to the purchase of Bonds or any related arrangements, except that the Agency at the expense of the Lessee shall cooperate in the making of any such arrangements.

SECTION 3.8. Letters of Credit; Fixed Rate Credit Facility.

(a) In order to secure, evidence or be otherwise in furtherance of the obligations of the Lessee under Sections 3.3 and 3.7 hereof, the Lessee may, but shall not be obligated to, provide, subject to the provisions of Sections 3.8(b) and (c) hereof, one or more Letters of Credit or Fixed Rate Credit Facilities, from time to time, and, subject to the provisions of this Section 3.8, may, from time to time, terminate, or cause or allow to be terminated, any such Letter of Credit. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit, and to take actions under the Letter of Credit or any Fixed Rate Credit Facility, in accordance with the terms thereof and of the Indenture.

(b) Each Letter of Credit shall be the obligation of the Bank to pay to the Trustee, in accordance with the terms thereof, such amounts as shall be specified therein and available to be drawn thereunder for the timely payment of the principal of and interest on the Series 2004 Bonds, and the Purchase Price of the Series 2004 Bonds, required to be made pursuant to, and in accordance with, the provisions of the Indenture. Upon the initial authentication and delivery of the Series 2004 Bonds, the Lessee shall deliver to the Trustee the Initial Letter of Credit as security for the payment of its obligations under Sections 3.3 and 3.7 hereof. The Initial Letter of Credit shall expire upon the earlier of August 31, 2007 or the date of occurrence of one of the events specified therein resulting in expiration thereof.

(c) The Lessee may, at its election, and with the prior written consent of the Bank, provide for one or more extensions of the Letter of Credit in accordance with its terms and the terms of the Letter of Credit and Reimbursement Agreement.

(d) Subject to the provisions of Sections 3.8(d), (e) and (f) below, the Lessee may terminate or cause or allow a Letter of Credit to be terminated and to replace a terminating or expiring Letter of Credit with a Substitute Letter of Credit, only if on or prior to the fiftieth (50th) day prior to the proposed effective date of such Termination or Expiration:

(i) the Lessee shall deliver to the Agency, the Trustee, the Remarketing Agent and the Bank a notice which (1) states the effective date of such termination, and (2) directs the

Trustee, after taking such actions thereunder as are required to be taken to provide moneys due under the Indenture in respect of the Series 2004 Bonds or the purchase thereof, to surrender any evidence of the Letter of Credit to be terminated to the obligor thereon on the effective date of such Termination, and to thereupon deliver any and all instruments to effect such Termination which may be reasonably requested by such obligor; and

(ii) the Lessee shall furnish to the Agency, the Trustee and the Remarketing Agent (1) the Substitute Letter of Credit; (2) if applicable, an opinion of Nationally Recognized Bond Counsel to the effect that substitution of such Substitute Letter of Credit (a) is lawful under the Act and authorized under this Agreement and complies with the terms hereof and of the Indenture and (b) will not adversely affect the exclusion of interest on a Series of Bonds from gross income for Federal income tax purposes or the validity of a Series of Bonds; (3) an opinion of counsel, reasonably satisfactory to the Trustee, for the issuer of the Substitute Letter of Credit to the effect that such Substitute Letter of Credit is a legal, valid and binding obligation of such issuer, enforceable in accordance with its terms; and (4) an opinion of Nationally Recognized Bond Counsel experienced in securities law to the effect that such Substitute Letter of Credit does not require registration under any applicable federal securities laws.

(e) Any such substitute Letter of Credit shall be issued by a bank acceptable to the Agency and the Remarketing Agent, shall expire no earlier than one year from the date of its effective date, shall provide that funds can be drawn for the purposes and in the amounts and at the times provided for in the Indenture and shall otherwise be in form and substance reasonably acceptable to the Agency and the Trustee.

(f) The Lessee and the Agency agree that any Series of Bonds shall be subject to mandatory tender for purchase on the Business Day immediately prior to the substitution of a Substitute Letter of Credit unless prior to such date the Lessee shall, if such Bonds are rated, deliver or cause the delivery of a written confirmation from each Rating Agency to the effect that the substitution of the Substitute Letter of Credit will not, by itself, result in a reduction or withdrawal of its ratings then in effect on the Bonds. The Lessee and the Agency further agree that except during a Term Interest Rate Period ending [June 1, 2030], the Series 2004 Bonds shall be subject to mandatory redemption on the fifth (5th) Business Day immediately preceding the Termination or Expiration of the then existing Letter of Credit in the event that a Substitute Letter of Credit is not obtained and delivered to the Trustee at least fifty days prior to such expiration or termination in the manner herein provided.

(g) For any Term Interest Rate Period ending June 1, 2030, the Lessee shall maintain a Fixed Rate Credit Facility meeting the requirements of this Section 3.8 and Section 2.12 of the Indenture, unless (i) the Agency in writing waives such requirement and (ii) the Remarketing Agent determines that maintenance of a Fixed Rate Credit Facility is not necessary for the remarketing of the Bonds upon adjustment to such Term Interest Rate Period.

(h) Each Fixed Rate Credit Facility shall be delivered to the Trustee on or prior to the 30th day prior to the proposed effective date of any adjustment to a Term Interest Rate Period ending June 1, 2030, and shall become effective on or prior to such effective date; provided, however, that in accordance with Section 2.03(b)(ii) of the Indenture, no such Fixed Rate Credit Facility shall be required if (i) the Agency in writing waives such requirement and (ii) the Remarketing Agent determines that maintenance of a Fixed Rate Credit Facility is not necessary for the remarketing of the Bonds upon adjustment to such a Term Interest Rate Period. Each Fixed Rate Credit Facility shall be in form and substance acceptable to the Agency and the Trustee, shall be issued by a bank, insurance company or corporation acceptable to the Agency and Trustee and shall be accompanied upon delivery with (i) if the Series of Bonds are

rated, a written confirmation from each Rating Agency to the effect that the delivery of the Fixed Rate Credit Facility will not, by itself, result in a reduction or withdrawal of its Long-Term ratings then in effect on the Series of Bonds, (ii) an enforceability opinion relating to such Fixed Rate Credit Facility, satisfactory to the Agency, the Trustee, the Remarketing Agent and any Rating Agency, (iii) an opinion of Nationally Recognized Bond Counsel that delivery of such Fixed Rate Credit Facility is lawful under the Act and is authorized or permitted by this Indenture and (iv) such other opinions and certificates relating to the Fixed Rate Credit Facility, the issuer of the Fixed Rate Credit Facility and the Lessee as the Agency, the Trustee or the Remarketing Agent may reasonably require.

(i) No Termination of a Letter of Credit described in this Section 3.8 shall take place if moneys described in Section 5.06(a)(i), (ii) or (iii) of the Indenture shall not be available to pay the Purchase Price of the Series 2004 Bonds upon mandatory tender for purchase pursuant to Section 2.06 of the Indenture.

(j) Anything in this Agreement or the Indenture to the contrary notwithstanding, (1) if a Substitute Letter of Credit is to be provided, the Substitute Letter of Credit shall become effective on or before the Termination date of the prior Letter of Credit, if any, and (2) in the event that the Termination of a Letter of Credit and the provision of a Substitute Letter of Credit in lieu thereof shall require a mandatory tender for purchase of Series 2004 Bonds pursuant to Section 2.06 of the Indenture, the Termination of such Letter of Credit shall not occur until the Trustee shall have made such drawings, if any, or taken such other actions, if any, thereunder as shall be required under the Indenture in order to provide sufficient moneys for such mandatory tender for purchase of Series 2004 Bonds on the date fixed for such mandatory tender for purchase, and such moneys shall have been provided to the Trustee.

SECTION 3.9. Assignment of Sublease Agreement.

(a) In order to secure the payment 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, and the right to enforce all of the Lessee's rights and remedies thereunder.

(b) 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, the Bondowners, the Trustee and the Bank and that any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

(c) In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, the Trustee or the Bank, all such liability being hereby expressly waived and released by the Lessee. Neither the Agency, the Trustee nor the Bank shall be obligated to perform or discharge any obligation, duty or liability under the Sublease Agreement, or under or by reason of this assignment.

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

SECTION 4.1. Maintenance, Alterations and Improvements.

(a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility

in the manner for which it was designed and intended and contemplated by this Agreement and in careful, prudent and efficient manner, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the security for the Bonds shall not be impaired. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

(b) Subject to applicable provisions of the Letter of Credit and Reimbursement Agreement, the Lessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that (i) the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and efficient manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$250,000 and are structural in nature, under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Bank (or, if the Letter of Credit is no longer in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, the Agency and the Trustee) and only after the Lessee shall have furnished to the Agency, the Bank and the Trustee, if requested, a labor and materials payment bond, or other security, reasonably satisfactory to the Agency, the Bank and the Trustee and (v) such additions or alterations do not change the nature of the Facility so that it would not constitute a civic facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, the Indenture, the Agency Mortgage and the other Security Documents, and the Lessee shall deliver or cause to be delivered to the Agency, the Trustee and the Bank appropriate documents as may be necessary to convey leasehold title to such property to the Agency and to subject such property to this Agreement and the lien and security interest of the Agency Mortgage, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment and other personal property (the "Lessee's Property") without conveying leasehold title to such property to the Agency or subjecting such property to this Agreement and the lien and security interest of the Agency Mortgage, provided, that no such property would otherwise be subject to the Agency Mortgage or constitute part of the Facility Realty based on the description of collateral contained therein. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. Except as may be provided expressly to the contrary in the Letter of Credit and Reimbursement Agreement, the Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

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

take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that the Agency Mortgage shall constitute first mortgage liens on the Facility.

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 (the "Existing Facility Property"), provided that:

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

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded in or otherwise disposed of in an arms' length, bona fide transaction, and the aggregate fair market value of such items so removed for any Fiscal Year of the Lessee exceeds \$250,000, the Lessee shall pay to the Trustee for deposit in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds or payment of amounts owed or owing to the Bank under the Letter of Credit and Reimbursement Agreement (or, if no Letter of Credit is in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement have been paid in full, in the Redemption Account of the Bond Fund) the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility as a qualified "project" as defined in and as contemplated by the Act, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would reduce the fair market value of the Facility below its value immediately before such removal (except by the amount deposited in the Reimbursement Account of the Lease Payments Fund or in the Redemption Account of the Bond Fund pursuant to paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder or under the Letter of Credit and Reimbursement Agreement.

(b) The Lessee and/or the Sublessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee appropriate documents conveying to the Agency title to any property installed or placed upon the Facility pursuant to Section 4.2(a)(i) hereof and subjecting such substitute or replacement property to this Agreement and the lien and security interest of the Agency Mortgage, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents releasing any property removed from the Facility pursuant to Section 4.2(a) hereof from the lien thereon and security interest therein granted under the Agency Mortgage. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and costs of any releases) incurred in subjecting to this Agreement and the lien and security interest of the Agency Mortgage of any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

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

(d) Within 120 days after the close of each Fiscal Year of the Lessee (i) during which Fiscal Year action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee shall furnish

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

SECTION 4.3. Payment in Lieu of Real Estate Taxes.

(a) **Description and Address of Project:**

The Project consists of the acquisition of an approximately 79,000 square foot parcel of real property and the renovation, equipping and improvement of an approximately 51,000 square foot building thereon. The Facility Realty is located at 1261 Seabury Avenue, Bronx, New York, being Block 3843 and Lot 45 on the Official Tax Map of Bronx County.

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

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

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

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes in accordance with the provisions of Section 4.3(g) hereof, with respect to the Facility Realty as follows: (i) with respect to the Land, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements, in the amounts as determined in subsections (e) and (f) below.

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

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

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

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

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) but only to the extent that Full Land Taxes (as defined below) shall exceed the Maximum Land Tax Abatement for the City Tax Fiscal Year in question:

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2026	\$36,000
July 1, 2026 - June 30, 2027	\$28,800
July 1, 2027 - June 30, 2028	\$21,600
July 1, 2028 - June 30, 2029	\$14,400
July 1, 2029 - Expiration Date	\$7,200

“PILOT Commencement Date” shall mean July 1, 2005.

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

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

For the period commencing on Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in or control over the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

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

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

For the period commencing on the PILOT Commencement Date and ending the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- (1) from the PILOT Commencement Date through June 30, 2026, an amount, as determined for each City Tax Fiscal Year, equal to the lesser of Adjusted CRET and STRET; and

- (2) from July 1, 2026, through the Expiration Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2026 - June 30, 2027	STRET + [(CRET less STRET) x 0.2]
July 1, 2027 - June 30, 2028	STRET + [(CRET less STRET) x 0.4]
July 1, 2028 - June 30, 2029	STRET + [(CRET less STRET) x 0.6]
July 1, 2029 – Expiration Date	STRET + [(CRET less STRET) x 0.8]

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

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

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

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

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

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

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

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

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

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

(f) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project (Constructing), the Lessee shall make any alterations of or additions to the Improvements (“**Additional Improvements**”), the Lessee shall: (i) deliver written notice to an Authorized Representative of the Agency of such Additional Improvements within thirty (30) days after the completion thereof; and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii) make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

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

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay twice a year, seven Business Days before January 1 and seven Business Days before July 1, to the PILOT Depository, or to such other representative of the Agency, or at such other times, 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. The Lessee shall pay a late payment penalty of five per cent (5%) of any amount that is not paid when due under this Section 4.3. In addition, for each month or part thereof that a payment under this Section 4.3 is delinquent beyond the first month, interest shall accrue and be payable by the Lessee on the total amount due as provided above, plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made.

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

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date that the Agency shall no longer have a leasehold interest in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such termination or cessation of the Agency's leasehold interest occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such termination or cessation of the Agency's leasehold interest.

With respect to the semi--annual period of the fiscal year in which the Agency has ceased to have a leasehold interest in the Facility Realty, the Agency shall cause the Collector of the City to apportion that part of the installment payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of the termination or cessation of the Agency's leasehold interest and ending on the June 30 or 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, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, used and/or occupied by any other Person other than the Lessee, for so long as such use and/or occupation shall continue. The Lessee represents to the Agency that no portion of the Facility Realty is used and/or occupied, or is intended to be used and/or occupied, by Persons other than the Lessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if during the term of this Agreement the Lessee ever intends to permit any Person other than itself to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

The Lessee further agrees to furnish the Agency, in substantially the form provided in Schedule C attached hereto, with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth inter alia, all Persons other than the Lessee or Affiliates of the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty.

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

(j) ***QEZE Tax Credits:***

Notwithstanding the provisions of subsections (d), (e) and (f) of this Section 4.3, if (x) the Land is located in an Empire Zone, and (y) the Lessee is or expects to become a Qualified Empire Zone Enterprise ("QEZE"), and (z) the Lessee has qualified or expects to qualify for QEZE tax credits, then, the Lessee shall make payments in lieu of real estate taxes equal to the following amounts: (i) with respect to the Land, Full Land Taxes; and (ii) with respect to the Improvements, Adjusted CRET. In the event the State repeals the Empire Zone program, or that part of it providing for QEZE tax credits, and as a result of such repeal 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 subsections (d), (e) and (f), shall apply.

(k) *Survival of Obligations:*

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

SECTION 4.4. **Taxes, Assessments and Charges.**

(a) The Lessee shall pay when the same shall become due all taxes (except to the extent that the Lessee shall have made payments in lieu in respect thereof as provided in Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Sublease Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the rentals hereunder or under the Sublease Agreement during the term of this Agreement and the Sublease Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. The Lessee shall not be in default of this Section 4.4 if the Lessee withholds payment of any Imposition provided that it challenges the payment thereof in good faith and it deposits with the Trustee an amount equal to the Imposition and any interest thereon.

(b) In the event the Facility is exempt from Impositions solely due to the Agency's leasehold title to the Facility, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility as if the Agency did not have leasehold title to the Facility.

SECTION 4.5. **Insurance.**

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

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

(ii) Reserved;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000, which insurance (A) will also provide coverage of the Lessee's obligations

of indemnity under Section 6.2 hereof (other than under Sections 6.2(a)(i) and (ii) and, to the extent not otherwise reasonably available, 6.2(c) hereof), (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for deductible amount greater than \$5,000;

(iv) Boiler and machinery property damage insurance in respect of any steam and pressure boilers and similar apparatus located on the Facility Realty from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises and in each case approved by the Agency, the Bank and the Trustee;

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

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

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

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

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

(2) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and the Bank shall name the Trustee and the Bank as loss payees, as their interests shall appear under the standard loss payee clause and as mortgagees under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and the Bank and deposited in the Renewal Fund to be held by the Trustee for the benefit of the Holders of the Bonds and the Bank;

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

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

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

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

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

(8) 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.

(ix) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be deposited in the Renewal Fund (unless otherwise provided herein or in the Indenture) and applied in accordance with Section 5.1 hereof and the Indenture.

(x) Concurrently with the original issuance of the Series 2004 Bonds, the Lessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee duplicate copies of certificates of insurance evidencing compliance with the insurance requirements of this Section 4.5. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Bank and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(xi) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency, the Bank or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5 and shall cause any sublessee, contractor or other insuring party under this Section 4.5 to take similar actions with respect to such party's insurance required hereunder. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

(xii) 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.

SECTION 4.6. **Advances by Agency or Bank.**

In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency or the Bank, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency or the Bank under this Agreement, the Indenture or any other Security Documents, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency or the Bank shall become an additional obligation of the Lessee to the Agency or to the Bank, as the case may be, which amounts, together with interest thereon at the rate specified in Section 2.09(d) of the Letter of Credit and Reimbursement Agreement, from the date advanced, the Lessee will pay upon demand therefor by the Agency or the Bank, as the case may be. Any remedy herein vested in the Agency or the Bank for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency and the Bank for the collection of all such amounts so advanced.

SECTION 4.7. Compliance with Law.

(a) The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Sublessee, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply 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, the Bank and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee, at its own expense, shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices), 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, the Bank and the Trustee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b)

imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Lessee, at its own expense, shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

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

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 5.1. Damage, Destruction and Condemnation.

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

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

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

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

(b) Upon the occurrence of a Loss Event, the Net Proceeds in excess of \$250,000 derived therefrom shall be paid to the Trustee for the benefit of the Bondholders and the Bank and deposited in the Renewal Fund and, subject to the applicable provisions of the Letter of Credit and Reimbursement Agreement, the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), but subject to applicable provisions of the Letter of Credit and Reimbursement Agreement, promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Bank, the Trustee or any Bondholder (other than from the proceeds of Additional Bonds as may be issued for such

purpose), nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to purchase the Facility and make advance rental payments to redeem the Bonds in whole. Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency, the Bank and the Trustee in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (i) above to be exercised in accordance with the provisions of clause (i) above.

Net Proceeds in an amount less than or equal to \$250,000 may be retained by the Lessee and applied to any lawful purpose.

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

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

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

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Bank (or, if all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement shall be paid in full and the Letter of Credit is no longer in effect, the Agency and the Trustee) which approval shall not be unreasonably withheld or delayed,

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

(iv) be preceded by the furnishing by the Lessee to the Agency, the Bank and the Trustee of either (A) a labor and materials payment bond, or other security, reasonably satisfactory to the Agency, the Bank and the Trustee, or (B) a fixed price contract or contracts reasonably satisfactory to the Bank as to content and the contractor thereunder,

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

(vi) if the estimated cost of such rebuilding, replacement, repair or restoration be in excess of \$250,000, be effected under the supervision of an Independent Engineer.

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

(f) The Agency, the Bank, the Trustee, the Lessee and the Sublessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Lessee, the Bank and the Trustee (or, if all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full and the Letter of Credit is no longer in effect, the Lessee and the Trustee) (such approvals not to be unreasonably withheld or delayed).

(g) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, or if the Lessee is required to direct the Agency to redeem Bonds in accordance with the Letter of Credit and Reimbursement Agreement, the Lessee shall exercise its option to purchase the Facility pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds pursuant to Section 2.04 of the Indenture or payment of amounts owed or owing to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is not in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) for the redemption of the Series 2004 Bonds pursuant to said section, and the Lessee shall thereupon pay to the Trustee for deposit in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds pursuant to Section 2.04 of the Indenture or payment of amounts owed or owing to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is not in effect, and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) for the redemption of the Series 2004 Bonds pursuant to said section an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Trustee, the Paying Agents, the Tender Agent and the Remarketing Agent together with all other amounts due under the Indenture, this Agreement and the other Security Documents, if any, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

(h) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Facility Realty but which, at the time of such damage or taking, is not part of the Facility and is owned by the Lessee or the Sublessee, subject to the applicable provisions of the Letter of Credit and Reimbursement Agreement, so long as the Bank is honoring draws under the Letter of Credit in accordance with its terms.

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

ARTICLE VI

PARTICULAR COVENANTS

SECTION 6.1. Dissolution or Merger 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 New York limited liability company, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State and organized under the laws of the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement, (iv) not sell, transfer, pledge or otherwise encumber all of substantially all of the assets remaining after execution of this Lease Agreement, and (v) not consolidate with or merge into another or permit one or more entities to consolidate with or merge into it. The Lessee may, however, without violating the foregoing, with the consent of the majority of the Holders of the Bonds (which consent will not be unreasonably withheld or delayed), but subject to the terms of the Letter of Credit and Reimbursement Agreement, 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, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity, (1) such entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, (B) is in good standing in the State, (C) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and in the Opinion of Counsel delivered to the Agency and the Trustee (x) such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee shall have been a party, and (y) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (D) has a net worth (as determined in accordance with Generally Accepted Accounting Principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer, and (2) the Lessee delivers to the Agency and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such merger, consolidation, sale or transfer will not adversely affect the validity of the Series 2004 Bonds.

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, agent (excluding for this purpose the Lessee, which is not obligated hereby to indemnify its own employees, affiliated companies or affiliated individuals) thereof and persons under the Agency's control or supervision, the Trustee, the Bank, the Remarketing Agent, the Bond Registrar and the Paying Agent(s) (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, reasonable costs and expenses (collectively, "**Claims**") of any kind for losses, damage, injury and liability (collectively, "**Liability**") of every kind and nature and however caused, arising during the period commencing from March 9, 2004, the date the Agency adopted its Bond Resolution for the Project, and continuing throughout the term of this Agreement (subject to Section 6.2(e) hereof), other than, with respect to any Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with:

(i) the financing of the costs of the Project and the marketing, issuance and sale of the Agency's Bonds for such purpose or the remarketing of the Bonds,

(ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility,

(iii) any defects (whether latent or patent) in the Facility, including but not limited to the violations set forth in Schedule E hereto

(iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of any of its obligations under, this Lease Agreement, the Indenture or any other Security Document, the Remarketing Agreement or the Reimbursement Agreement or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(vi) (vi) any injury to any Person or the personal property of any Person in or on the premises of the Facility;

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

(viii) 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,

(ix) the presence, disposal, release, or threatened release of any Hazardous Materials (as hereinafter defined) 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 or the Trustee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees and expenses, investigation and laboratory fees, court costs, and litigation expenses, or

(x) 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 the preceding subparagraphs (i) through (ix),

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

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, any Claims or Liability incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (ix) of Section 6.2(a) hereof, excluding any Claims or Liability, arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party or the Agency's failure to comply pursuant to the School Proviso. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2 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 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 limitation of any other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that except as set forth in the Phase I Environmental Assessment Report, dated March 24, 2004, prepared by Secor International Incorporated, a true and correct copy of which Report the Lessee has delivered to the Agency (the "Audit"), to the best of the Lessee's knowledge, no prior owner, occupant or user 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 shall ensure compliance by all occupants and users of the Facility with all applicable Legal Requirements, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

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

(v) the parties hereto agree that the reference in this Section 6.2 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 put and perform all 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.

(vi) In the event the Agency Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated, the Lessee shall deliver the Facility 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.

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, and to the extent prohibited by, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

(d) 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.

(e) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i) or (iv) hereof and (3) under Section 6.2(a)(ix) 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.

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

SECTION 6.3. **Compensation and Expenses of Trustee, Bond Registrar, Paying Agents, Tender Agent, Remarketing Agent, Bank, Credit Provider and Agency.**

The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts (i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel, (iii) the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred

by it under the Indenture, including reasonable counsel fees, (iv) the fees, costs and expenses of the Bond Registrar, the Tender Agent, the Remarketing Agent, the Bank and the Credit Provider, if any, (v) the fees, costs and expenses (including reasonable legal, accounting and other administrative expenses) of the Agency, (vi) the fees and expenses of the Rating Agencies, if any, and (vii) except to the extent of amounts deposited in the Reimbursement Account of the Lease Payments Fund, any such other amounts payable by the Lessee under the Letter of Credit and Reimbursement Agreement. The Lessee shall further pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Agreement or the Indenture or any other Security Document.

On the date of the sale and delivery by the Agency of the Series 2004 Bonds, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of an initial financing fee in the amount of \$55,500, of which \$2,500 of such fee has been received by the Agency prior to the date hereof as an application fee to the Agency. In addition, the Lessee agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$750 payable initially on the date of the sale and delivery by the Agency of the Series 2004 Bonds and on every anniversary of such date thereafter until the termination of this Agreement.

SECTION 6.4. **Retention of Title to Facility; Grant of Easements; Release of Certain Land.**

(a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2 and 7.2 hereof and subject to the applicable provisions of the Letter of Credit and Reimbursement Agreement, without the prior written consent of the Lessee and the Bank (or, if the Letter of Credit is no longer in effect and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement shall have been paid in full, the Trustee at the written direction of Holders of all of the Outstanding Bonds) and any purported disposition without such consent shall be void.

(b) The Agency will, however, at the written request of the Lessee, and with the prior written consent of the Bank and the Trustee, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of this Agreement and the lien of the Agency Mortgage, as shall be necessary or convenient for the operation or use of the Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility, and provided, further, that any consideration received by the Agency or the Lessee from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds or payment of amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is no longer in effect and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund). The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver and to cause and direct the Trustee and the Bank to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement and the lien of the Agency Mortgage.

(c) Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, and with the prior written consent of the Bank and the Trustee, the Lessee may from

time to time request in writing to the Agency the release of and removal from this Agreement and the leasehold estate created hereby and the release from the lien of the Agency Mortgage of any unimproved part of the Facility Realty (on which none of the improvements, including the buildings, structures, improvements, related facilities, major appurtenances, fixtures or other property comprising the Facility are situated) 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 and cause and direct the Trustee and the Bank to execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty and convey leasehold title thereto in the Lessee or such Person as the Lessee may designate 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 or Sublessee 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, the Agency Mortgage and the Indenture); and (v) any liens for taxes or assessments not then delinquent; provided, however, no such release shall be effected unless the Bank shall have consented thereto and (1) there shall be deposited with the Trustee and the Bank a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the portion of the Facility Realty and the release so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom; and (2) there shall be deposited with the Trustee an amount of cash for deposit in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds (or, if the Letter of Credit is no longer in effect and amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) equal to the greatest of (A) the original cost of such portion of the Facility Realty so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (C) if such portion is released in connection with the sale of such portion, the amount received by the Lessee upon such sale.

(d) No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the rents payable under Section 3.3 hereof or the other payments required to be made by the Lessee under this Agreement. The consent of the Bank to any release contemplated hereby shall be solely in the Bank's discretion, and the Bank may impose such conditions in addition to those conditions stated herein as it deems desirable prior to consenting to any release contemplated hereby.

SECTION 6.5. Financial Statements; No-Default Certificates.

(a) The Lessee agrees to furnish to the Agency upon request, and to the Trustee all those financial statements required to be furnished to the Bank under the Letter of Credit and Reimbursement Agreement at the times and in the form and manner prescribed therein.

(b) The Lessee shall deliver to the Agency upon request, and to the Bank and the Trustee with each delivery of annual financial statements required by Section 6.6(a) hereof, (i) a certificate of an Authorized Representative of the Lessee as to whether or not, as of the close of such preceding Fiscal Year of the Lessee, and at all times during such Fiscal Year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and in any other Security Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in

such compliance, such Authorized Representative shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, (ii) a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency, the Bank or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to the knowledge of such Authorized Representative no default or breach exists hereunder or specifying each such default or breach of which such Authorized Representative has knowledge.

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

SECTION 6.6. Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part of any thereof or the interest therein of the Agency, the Bank, the Lessee, the Sublessee or the Trustee or against any of the rentals or other amounts payable under this Agreement or the Sublease Agreement or the interest of the Agency, Lessee or the Sublessee under this Agreement or the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4) not yet payable, or payable without the addition of any fine, penalty, interest or cost for non-payment, Permitted Encumbrances, or Liens being contested as permitted by Section 6.6(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency, the Bank and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense (subject to the provisions of Section 2.1(g) hereof) 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 or the Lessee's interest in the Facility.

(b) The Lessee may, at its sole expense and subject to applicable provisions of the Letter of Credit and Reimbursement Agreement, contest (after prior written notice to the Agency, the Bank and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility, or any part of any thereof or interest therein, or in this Agreement or the Sublease Agreement, of the Agency, the Bank, the Lessee, the Sublessee or the Trustee or against any of the rentals or other amounts payable under this Agreement or the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Sublessee, the Agency, the Bank nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in

such proceedings or as may be reasonably requested by the Trustee or the Bank to protect the security intended to be offered by the Indenture and the Agency Mortgage.

SECTION 6.7. **Agency's Authority; Covenant of Quiet Enjoyment.**

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

SECTION 6.8. **No Warranty of Condition or Suitability.**

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

SECTION 6.9. **Amounts Remaining in Funds.**

It is agreed by the parties hereto that any amounts remaining in the Rebate Fund, the Lease Payment Fund, the Bond Fund, the Project Fund, the Revenue Fund, or the Renewal Fund upon the expiration or sooner or later termination of the term of this Agreement as provided in this Agreement, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Bond Registrar, the Paying Agents, the Remarketing Agent, the Tender Agent, the Bank, the Credit Provider, if any, and the Agency in accordance with the Indenture and after all rents and all other amounts payable hereunder and under the Letter of Credit and Reimbursement Agreement shall have been paid in full, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

SECTION 6.10. **Issuance of Additional Bonds.**

(a) The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Bank (for so long

as the Letter of Credit is in effect or any amounts are owed under the Letter of Credit and Reimbursement Agreement), to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2004 Bonds for the purpose of (i) completing the Project, (ii) providing funds in excess of the Net Proceeds for insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility or (iv) refunding Outstanding Bonds. If the Lessee is not in default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement and the Lessee and the Sublessee shall enter into any amendment to the Sublease Agreement, providing, among other things, for the payment by the Lessee and Sublessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

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

SECTION 6.11. Non-Discrimination; Employment Information, Opportunities and Guidelines. (a) The Lessee shall ensure that all employees and applicants for employment at the Facility are afforded equal employment opportunity without discrimination.

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

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

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

(e) The Agency and the Lessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility; provided however, if the Agency and the Lessee are unable to reach such mutual agreement, the Agency and the Lessee shall cooperate to ensure compliance with this Section 6.11.

(f) Except as is otherwise provided by collective bargaining contracts or agreements to which the Lessee is a party, the Lessee shall cause new employment opportunities created as a result of the Project to be listed with the New York State Department of Labor, Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership

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

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

(h) Annually, by July 31 of each year until the termination of this Agreement, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, substantially in the form of Schedule A-1 hereto, certified as to accuracy by a member of the Lessee. In addition, upon a redemption of the Series 2004 Bonds, the Lessee shall submit to the Agency an employment report, substantially in the form of Schedule A-2 hereto, certified as to accuracy by a member of the Lessee.

SECTION 6.12. Redemption Under Certain Circumstances; Special Covenants.

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

commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholders of any such extension.

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

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

SECTION 6.13. Further Assurances.

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

SECTION 6.14. Recording and Filing.

The Agency shall cause this Agreement, as originally executed or a memorandum thereof, to be recorded (at the sole cost and expense of the Institution) subsequent to the recordation of the Agency Mortgage, the Indenture and the Company Lease, 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. In addition, the security interest granted by (i) the Agency to the Trustee pursuant to the Indenture, and (ii) the Agency and the Institution to the Trustee pursuant to the Agency Mortgage, shall in each case be perfected by the filing of financing statements at the direction of the Agency (at the sole cost and expense of the Institution) which financing statements shall be in accordance with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the appropriate office of the Register of The City of New York. The Trustee shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect) the security interests created by the Indenture and the Agency Mortgage, so that the rights of the Agency and the Trustee in the Trust Estate may be fully preserved as against creditors or purchasers for value from the Agency or the Institution. The Institution agrees to furnish the Agency and the Trustee with the Opinion of Counsel addressed to the Agency and the Trustee referred to in Section 7.08 of the Indenture and shall perform all other acts (including the payment of all costs) necessary in order to enable the Agency and the Trustee to comply with this Section 6.14, Section 12 of the Agency Mortgage and Section 7.08 of the Indenture.

The Agency and the Institution acknowledge that, as of the date of issuance of the Series 2004 Bonds,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a "public-financed transaction" is effective for a period of 30 years after the date of filing if such initial financing statement indicates that it is filed in connection with a public financed transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least 20 years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of five (5) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Agency shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements. The Institution acknowledges and agrees that the Agency shall have no responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section or a failure of sufficiency of any such act so effected.

SECTION 6.15. Right to Cure Agency Defaults.

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

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

SECTION 7.1. Events of Default.

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

(a) Failure of the Lessee or the Sublessee (i) to make any rental payment for deposit in the Reimbursement Account of the Lease Payments Fund that has become due and payable by the terms of Section 3.3(a) or (b) hereof; or (ii) to provide sufficient moneys for the purchase of any Bonds pursuant to Section 3.7 hereof;

(b) Failure of the Lessee to pay any amount (except the obligation to pay rent under Sections 3.3 and 3.7 hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4 or 4.5 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of

such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Lessee 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, if such failure can be remedied, (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same; provided, however, in any event such failure shall be remedied within sixty (60) days after receipt by the Lessee of the notice referred to above;

(d) The Lessee or the Sublessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such 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 any principal of the Lessee or the Sublessee, 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 any principal of the Lessee or the Sublessee or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Lessee or the Sublessee shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or the Sublessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made by the Lessee (i) in the application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) by the Lessee or Sublessee in this Agreement or in any of the other Security Documents or (iii) in the Contract of Purchase among the Agency, the Lessee and the original purchaser(s) of the Bonds, or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made; or

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

(h) Receipt by the Trustee of written notice from the Bank that an Event of Default occurred under the Letter of Credit and Reimbursement Agreement and directing the Trustee to accelerate payment of the Bonds.

SECTION 7.2. Remedies on Default.

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, the Agency, or the Trustee where so provided, may, subject to Section 7.8 hereof and Article VIII of the Indenture, take any one or more of the following remedial steps:

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

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

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

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

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

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

(vii) The Agency, without the consent of the Trustee or any Bondholder, may proceed to enforce the Agency's Reserved Rights by (i) an action for damages, injunction or specific performance, and/or (ii) conveying all of the Agency's right, title and interest in the Facility to the Lessee, subject to the lien of the Agency Mortgage and any other Security Documents.

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

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

(d) Notwithstanding any provision of this Agreement to the contrary, the Trustee shall not take any action to accelerate the Bonds or dispose of any collateral pledged under the Security Documents except as provided in Article VIII of the Indenture.

SECTION 7.3. Reletting of Facility.

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

SECTION 7.4. Remedies Cumulative.

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

SECTION 7.5. No Additional Waiver Implied by One Waiver.

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

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

SECTION 7.6. Effect on Discontinuance of Proceedings.

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

SECTION 7.7. Agreement to Pay Attorneys' Fees and Expenses.

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

SECTION 7.8. Rights of Bank.

Notwithstanding anything to the contrary contained herein, and subject to the provisions and limitations of Section 7.10 of the Indenture, neither the Trustee nor the Agency shall (i) take any actions to accelerate the Bonds (except to the extent of a redemption of the Series 2004 Bonds pursuant to Section 2.04(f) of the Indenture), nor (ii) foreclose, release, take possession of or otherwise dispose of any collateral covered by the Security Documents, except with the prior written consent of the Bank; provided, however, the Agency's Reserved Rights and its ability to enforce those rights under Section 7.2(f) hereof shall not be subject to the consent of the Bank.

ARTICLE VIII

OPTIONS

SECTION 8.1. Options.

(a) The Lessee has the option to make advance rental payments for deposit in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds or payment of amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is no longer in effect and amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the

Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default hereunder other than Events of Default under Sections 7.1(c) or (f) hereof. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee, the Agency and the Bank not less than forty-five days prior to the date on which the Bonds are to be redeemed, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed. Such advance rental payment shall be delivered to the Trustee not less than the forty-fifth day preceding the date set for redemption of the Bonds and shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amount on deposit in the Reimbursement Account of the Lease Payments Fund for application in connection with the redemption of Bonds or payment of amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is no longer in effect and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Bank and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with all other amounts due and payable under this Agreement, the other Security Documents, the Remarketing Agreement and the Letter of Credit and Reimbursement Agreement.

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

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

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

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

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

(d) The Lessee, in purchasing the Agency's leasehold interest in the Facility pursuant to Section 8.1(c) hereof, shall file with the Agency, the Bank and the Trustee the certificate prescribed by Section 8.1(c)(1) or (2) hereof together with a resolution of the members or executive committee of the Lessee (certified as true and correct by an Authorized Representative of the Lessee) to the effect that, as a result of the occurrence of the event giving rise to the exercise of such option to purchase, the Lessee has discontinued, or at the earliest practicable date will discontinue, the operation of the Facility for its intended purposes, and in the case of Section 8.1(b) or 8.1(c) hereof, the Lessee shall pay to the Trustee as the purchase price, in legal tender, advance rental payments, for deposit in the Reimbursement Account of the Lease Payments Fund for reimbursement of amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement in connection with the redemption of Bonds or payment of other amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is no longer in effect and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and interest on, all the Outstanding Bonds at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(i) an amount which, when added to the amount on deposit in the Reimbursement Account of the Lease Payments Fund for reimbursement of amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement in connection with the redemption of Bonds or payment of other amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement (or, if the Letter of Credit is no longer in effect and all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement are paid in full, in the Redemption Account of the Bond Fund) and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds or to reimburse the Bank for amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement in connection therewith;

(ii) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bank, the Bond Registrar, the Remarketing Agent, the Tender Agent and the Paying Agents and all other amounts due and payable under this Agreement, the Letter of Credit and Reimbursement Agreement, the Remarketing Agreement and the Indenture; and

(iii) one dollar (U.S. \$1).

(e) Notwithstanding any provision of this Agreement to the contrary, any sale by the Agency, and purchase by the Lessee, of the Facility pursuant to Sections 8.1(b) or (c) shall be subject to the lien of the Agency Mortgage until all amounts owed under this Agreement and the Letter of Credit and Reimbursement Agreement have been paid in full and the Letter of Credit or other Security Documents then in effect shall have been returned to the Bank for cancellation.

(f) Upon the payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption), the Lessee shall have the option to purchase the Agency's leasehold interest in the Facility and shall exercise such option by (1) delivering to the Agency and the Bank prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option to purchase, which notice shall set forth a requested closing date for the purchase of the Agency's leasehold interest in the Facility which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date a purchase price equal to the sum of one dollar (U.S. \$1), the fees and expenses of the Agency, the Trustee, the Bank, the Bond Registrar, the Remarketing Agent, the Tender Agent and the Paying Agents and all other amounts due and payable under this Agreement, the Letter of Credit and Reimbursement Agreement, the Remarketing Agreement or the Indenture. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

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

SECTION 8.2. Conveyance on Exercise of Option to Purchase.

(a) At the closing of any purchase of the Agency's leasehold interest in Facility pursuant to Section 8.1 hereof, the Agency will, upon receipt of payment of the purchase price, request the Trustee and the Bank to deliver to the Lessee, at the sole cost and expense of the Lessee, (i) a release, satisfaction or termination of the mortgage lien and security interest of the Agency Mortgage on the Facility and (ii) shall deliver or cause to be delivered other documents terminating the Agency's leasehold interest in the Facility Realty, as all such property then exists, and all rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anyway appertaining, subject to the following: (1) the nature, quality and extent to which title to said property shall have been vested in the Agency; (2) any Permitted Encumbrances to which title to said property was subject when conveyed to the Agency; (3) any liens, easements, security interests, claims, charges and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (4) any liens, security interests, claims, charges and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (5) any liens for taxes or assessments not then delinquent; (6) the rights, if any, of any condemning authority; and (ii) documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action, or any insurance proceeds or condemnation award, with respect to the Facility. Concurrently with the delivery of such title documents, there shall be delivered by the Agency to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay the Bonds.

(b) Upon conveyance of the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 3.1, 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5 and 9.16 and any other section hereof which, by its express terms, states it shall survive the termination of this Agreement, shall survive such termination.

SECTION 8.3. Option to Purchase or Invite Tenders of Bonds.

The Lessee shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Lessee or by any Affiliate thereof

shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase. The Agency shall at all times make available or cause to be made available to the Lessee its registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

SECTION 8.4. Termination of Agreement.

After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture and the return of the Letter of Credit, if any, then in effect to the Bank for cancellation, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Bank, the Credit Provider, if any, the Trustee, the Bond Registrar, the Tender Agent, the Remarketing Agent and the Paying Agents and all other amounts due and payable under this Agreement, the other Security Documents, the Remarketing Agreement and the Letter of Credit and Reimbursement Agreement together with any amounts required to be paid to the United States government pursuant to the Indenture, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 3.1, 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5 and 9.16 and any other section hereof which, by its express terms, states it shall survive the termination of this Agreement.

SECTION 8.5. Recapture of Agency Benefits.

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

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

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

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

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

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

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

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

The term "Benefits" shall mean, collectively:

1. all real estate tax benefits which have accrued to the benefit of the Lessee during such time as the Agency had a leasehold 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 which the Lessee would have been required to pay during the lease term had the City determined the amount of such real estate taxes as would be due if the Agency had no leasehold interest in the Facility Realty during such lease term; and
2. all miscellaneous benefits derived from the Agency's participation in the financing of the costs or assistance to the Project, including, but not limited to, any exemption from mortgage recording tax, commercial rent and occupancy tax, sales or use taxes and filing and recording fees.

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

1. The Lessee or Sublessee shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the City);
2. The Lessee or Sublessee shall have leased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency;
3. The Lessee shall have substantially changed in the scope and nature of the Lessee's or any Sublessee's operations at the Facility such that the Facility or any position thereof is not being operated as a qualified "project" under the Act;
4. The Lessee or any Sublessee shall have transferred all or substantially all of its employees to a location outside of the City; or
5. The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility except as provided in Section 6.1 or Section 9.3.

(c) The term "Substantial Completion Date" shall mean the date stated in a certificate of an Authorized Representative of the Lessee delivered pursuant to Section 2.1(h) hereof, after the Project has been substantially completed in accordance with such Section, and upon which date the Facility shall have commenced operations at substantially the level intended; provided, however, that the "Substantial Completion Date", as defined herein, shall be in any event deemed to occur no later than February 1, 2006, regardless of whether or not the Authorized Representative of the Lessee has delivered such certificate to the Agency.

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

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

(f) 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. Indenture; Amendment.

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

SECTION 9.2. Force Majeure.

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

SECTION 9.3. Assignment or Sublease.

(a) The Lessee may not at any time (i) subject to Section 6.1 hereof, assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility to any party other than the Sublessee without the prior written consent of the Agency and the Bank (or, if all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement have been paid in full and the Letter of Credit shall no longer be in effect as permitted hereunder and under the Indenture, the Agency); provided, that (1) the Lessee, shall nevertheless remain liable to the Agency for the payment of all rent and for the full

performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any sublessee in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any sublessee shall be a corporation or other entity validly existing under applicable law and shall utilize the Facility as a qualified "project" within the meaning of the Act, (5) such sublease shall not violate any provision of this Agreement, the Indenture, any other Security Document or the Letter of Credit and Reimbursement Agreement, (6) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty percent (20%) of such space would be sub-leased by the Lessee, (7) 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, the Trustee and the Bank (or, if all amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement have been paid in full and the Letter of Credit shall no longer be in effect as permitted hereunder and under the Indenture, the Agency and the Trustee) that such insurance coverage shall in no manner be limited by reason of such sublease, and (8) each such sublease contains such other provisions as the Agency, the Trustee or the Bank (or, if amounts owed to the Bank under the Letter of Credit and Reimbursement Agreement have been paid in full and the Letter of Credit shall no longer be in effect as permitted hereunder and under the Indenture, the Agency or the Trustee) may reasonably require. The Lessee shall furnish or cause to be furnished to the Agency, the Bank and the Trustee a copy of any such sublease in substantially final form at least thirty (30) days prior to the date of execution thereof.

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

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

(d) The Lessee covenants and agrees not to amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, any previously consented to sublease, including the Sublease Agreement, without the prior written consent of the Agency and the Bank.

SECTION 9.4. Priority of Indenture and Agency Mortgage.

Pursuant to the Agency Mortgage, the Agency, the Lessee, the Sublessee and the EAT will grant a mortgage liens on and a security interest in their respective interests in the Facility and the Collateral

Premises to the Trustee and the Bank. Pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other moneys receivable under this Agreement to the Trustee, for the benefit of the Bondholders and the Bank, as security for payment of the principal or Redemption Price, if applicable, of and interest on the Bonds and amounts owed or owing to the Bank under the Letter of Credit and Reimbursement Agreement, and this Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture and such mortgage liens, security interest, pledge and assignment thereunder.

SECTION 9.5. **Benefit of and Enforcement by Trustee and Bank.**

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

SECTION 9.6. **Amendments.**

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

SECTION 9.7. **Notices.**

All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed, if to the Agency, to the Chairperson, New York City Industrial Development Agency, 110 William Street, New York, New York with a copy to the General Counsel of the Agency at the same address; if to the Lessee, 1261 Seabury Avenue, Bronx, New York 10462, with a copy to Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York 10022, Attention Steven P. Polivy, Esq.; if to the Trustee, to Wachovia Bank, National Association, Corporate Trust, One Penn Plaza, New York, New York 10119; and if to the Bank, to Citibank, N.A., One Court Square, 43rd Floor, Long Island City, New York 11120, Attention: Betty Pau, Vice President. The Agency, the Lessee, they Trustee and the Bank may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

SECTION 9.8. **Prior Agreements Superseded.**

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

SECTION 9.9. **Severability.**

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

SECTION 9.10. **Inspection of Facility.**

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

SECTION 9.11. **Effective Date Counterparts.**

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

SECTION 9.12. **Binding Effect.**

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

SECTION 9.13. **Net Lease.**

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

SECTION 9.14. **Law Governing.**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE.

SECTION 9.15. **Investment of Funds.**

(a) Any moneys held as part of the Rebate Fund, the Revenue Fund, the Lease Payments Fund, the Earnings Fund, the Project Fund, the Bond Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Lessee, be invested and reinvested by the Trustee as provided in the Indenture. Neither the Trustee (except for its own gross negligence or willful misconduct) nor the Agency nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

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

SECTION 9.16. **Waiver of Trial by Jury.**

(a) The parties 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.

(b) 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 9.17. **Reserved.**

SECTION 9.18. **No Recourse under this Agreement or on Bonds.**

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

(b) All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee, and not of any director, officer, employee or agent of the Lessee in his individual capacity, and no recourse shall be had for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any director, officer, employee or agent of the Lessee.

SECTION 9.19. **Rights of Bank.**

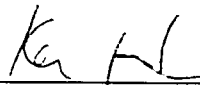
As between the Bank hereunder and the Lessee, any rights or benefits granted to the Bank are in addition to those contained in any agreements executed by the Lessee with or in favor of the Bank, and in the event of a conflict between this Agreement and such other agreements, such other agreements shall control with respect to the rights and obligations between the Bank and the Lessee, but shall in no way diminish the rights of the Agency and the Trustee set forth in this Agreement. In addition, any obligations of the Lessee hereunder shall be in addition to those contained in any agreement between the Lessee and the Bank. Notwithstanding any other provision herein to the contrary, the rights of the Bank hereunder shall be subject to Section 7.10 of the Indenture.

SECTION 9.20. **Date of Agreement for Reference Only.**


The date of this agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on August 11, 2004.

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

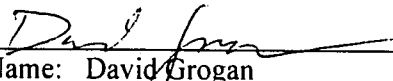
NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY

By: 
Name: Kei Hayashi
Title: Deputy Executive Director

GROGAN REALTY LLC

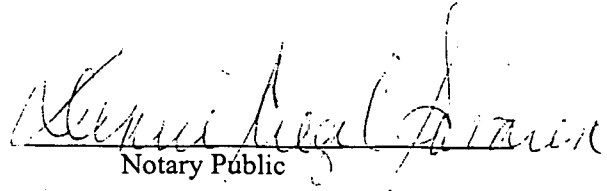
By: 
Name: David Grogan
Title: Member

SWEET SAMS BAKING COMPANY, LLC

By: 
Name: David Grogan
Title: Member

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

On the 10 day of August, in the year two thousand and four, before me, the undersigned, personally appeared David Grogan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.


Notary Public

DENISE RIEGEL SAVARESE
Notary Public, State of New York
No. 30-4826955
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires April 30, 2006

DESCRIPTION OF THE PROJECT

The project consist of the acquisition of an approximately 79,000 square foot parcel of real property located at 1261 Seabury Avenue, Bronx, New York, and the renovation, equipping and improvement of an approximately 51,000 square foot building thereon ("the Facility") to be used by the Sublessee in the manufacture and distribution of baked goods.

DESCRIPTION OF FACILITY REALTY
(see attached)

SCHEDULE "A"

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF NEWBOLD AVENUE (60 FEET WIDE) WITH THE WESTERLY SIDE OF SEABURY AVENUE (60 FEET WIDE);

THENCE WESTERLY ALONG THE NORTHERLY SIDE OF NEWBOLD AVENUE, 382.86 FEET;

THENCE NORTHERLY, THROUGH THE CENTERLINE OF A PARTY WALL AND PARALLEL WITH THE WESTERLY SIDE OF SEABURY AVENUE 206.13 FEET TO THE SOUTHERLY SIDE OF WATERBURY AVENUE (80 FEET WIDE);

THENCE EASTERLY ALONG THE SOUTHERLY SIDE OF WATERBURY AVENUE, 382.86 FEET TO THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF WATERBURY AVENUE WITH THE WESTERLY SIDE OF SEABURY AVENUE;

THENCE SOUTHERLY ALONG THE WESTERLY SIDE OF SEABURY AVENUE, 206.13 FEET TO THE CORNER AT THE POINT OR PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

Annual Employment Report

In order to comply with Local and State employment reporting requirements, the New York City Industrial Development Agency must require all of its project companies to complete and return the Report to the Agency no later than August 1, _____.

Grogan Realty LLC
1261 Seabury Avenue
Bronx, New York 10462

Telephone # _____

Tax ID # _____

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

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

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

Attached hereto is a copy of the Lessee's and the Sublessee's final payroll report (or similar report) evidencing the total number of employees employed by the Lessee and the Sublessee during the reporting period.

Principal/Owner/Chief Financial Officer _____ (Please Print)

Signature _____ Date _____

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

PLEASE FAX YOUR RESPONSE TO 212-312-3918

Annual Employment Report

FOR BOND REDEMPTIONS AND TERMINATIONS

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

Grogan Realty LLC
1261 Seabury Avenue
Bronx, New York 10462

Telephone # _____

Tax ID # _____

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

Number of existing FULL TIME JOBS _____

Number of existing PART TIME JOBS _____

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

Attached hereto is a copy of the Lessee's and the Sublessee's final payroll report (or similar report) evidencing the total number of employees employed by the Lessee and the Sublessee during the reporting period.

Principal/Owner/Chief Financial Officer _____
(Please Print)

Signature _____ Date _____

QUESTIONS: Please call the IDA Compliance Helpline at (212) 312-3968.

PLEASE FAX YOUR RESPONSE TO 212-312-3918

BENEFITS REPORT

For benefits utilized during the period of / / - / /

SALES TAX BENEFIT

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

not applicable, project not eligible for benefit 0

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

BUSINESS INCENTIVE RATE - (BIR)

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

not applicable, project not eligible for benefit 0

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

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

Signature: _____ Date: _____

QUESTIONS: Please call the **IDA Compliance Helpline** at (212) 312-3968.

PLEASE FAX YOUR RESPONSE TO 212-312-3918

20-- subtenant survey

Grogan Realty LLC
 1261 Seabury Avenue
 Bronx, New York 10462

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

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

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

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

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number _____

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

HelpLine: 212-312-3968

New York State Department of Taxation and Finance

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

For Period Ending December 31, _____ (enter year)

Project Information

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

1. Project purpose:
- | | | |
|--|--|--|
| <input type="checkbox"/> 0 Services | <input type="checkbox"/> 0 Construction | <input type="checkbox"/> 0 Agriculture, forestry, fishing |
| <input type="checkbox"/> 0 Wholesale trade | <input type="checkbox"/> 0 Retail trade | <input type="checkbox"/> 0 Finance, insurance or real estate |
| <input type="checkbox"/> 0 Transportation, communication, electric, gas or sanitary services | | |
| <input type="checkbox"/> 0 Manufacturing | <input type="checkbox"/> 0 Other (specify) _____ | |

2. Date project began: _____ / _____ / _____
MM DD YY

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

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

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

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

7. Total sales and use tax exemptions (actual tax savings; NOT total purchases)	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 (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

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

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

What must be reported?

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

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

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

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

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

See instructions below for additional information required.

When is the report due?

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

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.
Tax information: 1 800 972-1233
Forms and publications: 1 800 462-8100
From outside the U.S. and outside Canada: (518) 485-6800
Fax-on-demand forms: 1 800 748-3676
Internet access: <http://www.tax.state.ny.us>
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2100 (8:30 a.m. to 4:25 p.m., eastern time)



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



If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence.

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, NY 12227.

Privacy notification

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

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

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

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

SCHEDULE E

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Grogan Realty LLC, a New York limited liability company and Sweet Sams Baking Company, LLC (collectively, the "Lessee"), HEREBY CERTIFY that this Certificate is being delivered in accordance with the provisions of Section 2.2(b) of that certain Lease Agreement, dated as of August 1, 2004 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

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

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

the Agency has a good and valid leasehold interest in the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

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

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

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

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

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

GROGAN REALTY LLC

By: _____
Name:
Title:

SWEET SAMS BAKING COMPANY, LLC

By: _____
Name:
Title:

**AMENDED AND RESTATED
LEASE AGREEMENT**

Dated as of April 1, 2007

by and between

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY,**

and

**GROGAN REALTY LLC
and
SWEET SAMS BAKING COMPANY, LLC,**

New York City Industrial Development Agency
(2007 Sweet Sams Baking Company, LLC Project)

Affecting Land more particularly described in
Exhibit A to this Lease Agreement
in Bronx County, City and State of New York
which is known as Block 3843, Lot 45
on the Official Tax Map of Bronx County

Record and Return to:
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes, III, Esq.
File No. 90570.183

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND REPRESENTATIONS	4
Section 1.1. Definitions	4
Section 1.2. Construction	8
Section 1.3. Representations and Warranties by Agency	9
Section 1.4. Findings by Agency	9
Section 1.5. Representations and Warranties by the Lessee	9
ARTICLE II LEASEHOLD TRANSFER TO THE AGENCY; THE PROJECT; AND LEASEHOLD TITLE INSURANCE	11
Section 2.1. Leasehold Interest	11
Section 2.2. The Project	11
Section 2.3. Leasehold Title Insurance	12
Section 2.4. Limitation on Sales Tax Exemption	13
ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS	16
Section 3.1. Lease of the Facility	16
Section 3.2. Duration of Term	16
Section 3.3. Rental Provisions	16
Section 3.4. Rental Payments Payable Absolutely Net	17
Section 3.5. Nature of Lessee's Obligation Unconditional	17
Section 3.6. Assignment of Sublease Agreement	17
ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE	18
Section 4.1. Maintenance, Alterations and Improvements	18
Section 4.2. Removal of Property of the Facility	19
Section 4.3. Payment in Lieu of Real Estate Taxes	19
Section 4.4. Taxes, Assessments and Charges	25
Section 4.5. Insurance	25
Section 4.6. Advances by Agency	28
Section 4.7. Compliance with Law	28
ARTICLE V DAMAGE, DESTRUCTION AND CONDEMNATION	28
Section 5.1. Damage, Destruction and Condemnation	28

ARTICLE VI PARTICULAR COVENANTS	30
Section 6.1. Dissolution of Lessee; Restrictions on Lessee	30
Section 6.2. Indemnity.....	31
Section 6.3. Compensation and Expenses of the Agency	33
Section 6.4. Retention of Leasehold Title to Facility; Grant of Easements; Release of Facility Realty	33
Section 6.5. Discharge of Liens.....	34
Section 6.6. Agency’s Authority; Covenant of Quiet Enjoyment.....	35
Section 6.7. No Warranty of Condition or Suitability.....	35
Section 6.8. Financial Statements; No-Default Certificates.....	36
Section 6.9. Employment Information, Opportunities and Guidelines	36
Section 6.10. Further Assurances	37
Section 6.11. Recording and Filing.....	37
Section 6.12. Further Encumbrances.....	37
Section 6.13. Identification of Facility Equipment	37
Section 6.14. Subtenant Survey.....	38
Section 6.15. Contact Information Form.....	38
Section 6.16. Lessee’s Obligations to Pay Payment-in-lieu of Mortgage Recording Tax	38
ARTICLE VII EVENTS OF DEFAULT; REMEDIES.....	38
Section 7.1. Events of Default.....	38
Section 7.2. Remedies on Default	39
Section 7.3. Remedies Cumulative.....	40
Section 7.4. No Additional Waiver Implied by One Waiver	40
Section 7.5. Effect on Discontinuance of Proceedings	40
Section 7.6. Agreement to Pay Attorneys’ Fees and Expenses.....	40
ARTICLE VIII OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS	41
Section 8.1. Option to Purchase Agency’s Leasehold Interest in Facility and to Terminate Agreement.....	41
Section 8.2. Conveyance on Exercise of Option to Purchase	41
Section 8.3. Reserved.....	41
Section 8.4. Termination of Agreement.....	41
Section 8.5. Recapture of Agency Benefits.....	42
ARTICLE IX MISCELLANEOUS	44

Section 9.1. Force Majeure.....	44
Section 9.2. Priority.....	45
Section 9.3. Assignment or Sublease	45
Section 9.4. Amendments.....	47
Section 9.5. Notices.....	47
Section 9.6. Prior Agreements Superseded	48
Section 9.7. Severability.....	48
Section 9.8. Inspection of Facility	48
Section 9.9. Effective Date; Counterparts	48
Section 9.10. Binding Effect	48
Section 9.11. Third Party Beneficiaries.....	48
Section 9.12. Law Governing.....	48
Section 9.13. Waiver of Trial by Jury	48
Section 9.14. Non-Discrimination.....	48
Section 9.15. Recourse Under This Agreement	49
Section 9.16. Amendment and Restatement.....	49
Section 9.17. Date of Agreement for Reference Purposes Only	49

AMENDED AND RESTATED LEASE AGREEMENT

This **AMENDED AND RESTATED LEASE AGREEMENT**, made and entered into as of April 1, 2007 (this "Agreement"), by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), party of the first part, having its principal office at 110 William Street, New York, New York 10038, and **GROGAN REALTY LLC** and **SWEET SAMS BAKING COMPANY, LLC**, each a limited liability company duly organized and existing under the laws of the State of New York, parties of the second part, having their principal office at 1261 Seabury Avenue, Bronx, New York, amending and restating that certain Lease Agreement, dated as of August 1, 2004, (the "2004 Lease"), between the parties hereto.

WITNESSETH:

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

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

WHEREAS, on August 11 2004, the Agency issued its \$6,100,000 Federally Taxable Industrial Development Revenue Bonds (Sweet Sams Baking Company, LLC Project), Series 2004 (the "Series 2004 Bonds") for Grogan Realty LLC (the "Lessee") on behalf of Sweet Sams Baking Company, LLC (the "Sublessee") in connection with a project consisting of the acquisition of parcel of real property located at 1261 Seabury Avenue, Bronx, New York and the improvement and equipping of an approximately 51,000 square foot manufacturing facility thereon, together with a 16,000 square foot addition to be added thereto (the "Facility"), all for use by the Lessee and the Sublessee in the manufacture and distribution of baked goods (the "2004 Project"); and

WHEREAS, to secure the 2004 Bonds a letter of credit was issued by Citibank, N.A. in the amount of \$6,190,247 (the "Letter of Credit"), which letter of credit was issued by Citibank, N.A. at the request of the Lessee and Sublessee and that the Lessee has agreed pursuant to a Reimbursement Agreement dated as of August 1, 2004 by and between Citibank, N.A., Lessee, the Sublessee and David Grogan (the "Reimbursement Agreement") to reimburse Citibank, N.A. for draws made under the Letter of Credit; and

WHEREAS, in order to further secure the 2004 Bonds and to induce the Citibank, N.A. (the "**Mortgagee**") to issue the Letter of Credit, the Lessee, the Sublessee, FAE HOLDINGS 102696R, LLC, a Utah limited liability company having its office at 40 First American Exchange Company, LLC, 560 South 300 East, Salt Lake City, Utah 84111 (the "**EAT**") and the Agency entered into the Agency Fee and Leasehold Mortgage and Security Agreement (the "**Original Mortgage**") dated as of August 1, 2004 in the principal amount of \$6,190,247 recorded in CRFN 2004000590693 in the Office of the City Register for Bronx County, New York in favor of the Mortgagee and the trustee for the holders of the 2004 Bonds; and

WHEREAS, the Lessee has arranged for the 2004 Bonds to be redeemed in whole and has advised the Agency that it desires to continue its involvement with the Agency pursuant to the Agency's Industrial Incentive Program (Straight-Lease) and thereby continue to receive the benefit of its prior mortgage recording tax exemption and its continuing real estate tax abatements; and

WHEREAS, to facilitate the continuation of the aforesaid benefit, the Agency, the Lessee and the Sublessee have entered into negotiations to enter into a "straight-lease transaction" within the meaning of the Act pursuant to the Agency's Industrial Incentive Program and, in furtherance of such purposes, the Agency adopted a resolution on January 9, 2007 (the "**Authorizing Resolution**"), authorizing the continuation of such financial assistance and the execution and delivery of various project documents; and

WHEREAS, in order to finance the redemption in whole of the Series 2004 Bonds and to provide additional working capital to the Lessee and the Sublessee, the Mortgagee has agreed to lend the principal amount of \$2,612,404.17 to the Lessee, and the Lessee will execute and deliver a Gap Mortgage, Assignment of Lease and Rents and Security Agreement, dated April 5, 2007 (the "**Gap Mortgage**"), to the Mortgagee in the for the balance over the \$5,387,595.83 which is remaining principal amount of the Original Mortgage, for which mortgage the Agency will not provide any mortgage recording tax benefit, and the Lessee and the Agency will grant a consolidated mortgage lien to the Mortgagee pursuant to an Agreement Consolidating, Spreading and Modifying Mortgage and Note, dated April 5, 2007, which shall constitute a single lien in the principal amount of \$8,000,000 (the "**Consolidation Agreement**", together with the Original Mortgage and the Gap Mortgage, collectively, the "**Mortgage**"); and

WHEREAS, in order to evidence the Lessee's obligation to repay the loan made by Mortgagee to it pursuant to the Mortgage, the Lessee, simultaneously with the execution and delivery thereof, will issue to Mortgagee one or more promissory notes (collectively, the "**Mortgage Note**") in the aggregate principal amount of the Mortgage; and

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

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

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

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

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

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

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

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

Approved Facility shall mean a manufacturing and distribution facility for use by the Lessee and the Sublessee in the manufacture and distribution of baked goods.

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

who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency.

Authorizing Resolution shall have the meaning set forth in the recitals hereto.

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

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

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

Commencement Date shall mean April 6, 2007 on which date this Agreement was executed and delivered.

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

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

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

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

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

Facility Equipment shall mean that machinery, equipment and other tangible personal property acquired and installed in accordance with the Sales Tax Letter as part of the 2004 Project pursuant to the Sales Tax Letter delivered in connection with the Initial Project, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Lessee's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof), as more particularly described in Exhibit B "Description of the Facility Equipment" hereto, which is made a part of this Agreement. "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personality which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, *objets d'art* or other similar decorative items.

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

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

Guarantors shall mean the Lessee, the Sublessee and David Grogan.

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

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

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

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

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

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

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

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

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

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

Mortgagee shall mean the Mortgagee referred to in the recitals to this Agreement, and any other lender acceptable to the Agency and the Lessee.

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

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or

damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Agency or the Mortgagee) incurred in the collection thereof.

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

Permitted Encumbrances shall mean:

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

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

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

(iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any 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 use as an Approved Facility or purport to impose liabilities or obligations on the Agency; and

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

Person shall mean any individual, limited liability company, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

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

Prohibited Person shall mean (i) any Person (a) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, or (b) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or

the City, as the case may be, and (ii) any Person (a) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (b) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

2004 Project shall have the meaning specified in the recitals to this Agreement.

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

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

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

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

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, which the Agency made available to the Lessee in connection with the 2004 Project.

State shall mean the State of New York.

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

Sublessee shall mean, Sweet Sams Baking Company, LLC, a limited liability company organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to the Sublease Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its articles of organization or operating agreement, has the power and authority to own its property and assets, to carry

on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party. The Lessee is duly qualified to do business in every jurisdiction in which such qualification is necessary.

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

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

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

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

(f) Subject to Sections 4.2 and 5.1 hereof, no Facility Equipment shall be located at any site other than the Facility Realty.

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

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

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

group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

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

(k) The Lessee and the Sublessee each are in compliance, and will continue to comply, with all Legal Requirements applicable to the Project and the operation of the Facility.

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

(m) The Project was designed, and the operation of the Facility will be, in compliance with all applicable Legal Requirements.

(n) Neither the Lessee, the Sublessee nor any Affiliate of either is a Prohibited Person.

(o) The aggregate rentable square footage of the Improvements constituting part of the Facility is approximately 51,000 square feet and the aggregate square footage of the Land is approximately 79,000 square feet.

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

ARTICLE II

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

Section 2.1. Leasehold Interest. The Agency has acquired, for good and valuable consideration therefor, pursuant to the Company Lease, a valid leasehold interest in the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) a valid leasehold interest in all Improvements and good and merchantable title to all Facility Equipment intended to be incorporated or installed in the Facility as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest such leasehold estate in the Improvements and title to Facility Equipment in the Agency and to protect such title against claims of any third parties.

Section 2.2. The Project. (a) The Lessee will complete the 2004 Project on August 1, 2007 (the "**Completion Date**"), and that such completion shall be effected in a first class workmanlike manner, using appropriate materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of leasehold conveyance, or any amendments or supplements, 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 has obtained and will continue to obtain all approvals from any and all governmental agencies required for the 2004 Project and operation of the Facility, all of which will be done in compliance with all Legal Requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. The Lessee has 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.

(e) The date of completion for the Project shall be evidenced to the Agency and the Bank by a certificate of an Authorized Representative of the Lessee (on the form set forth in Schedule E) stating, except for any costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee (i) the date of completion of the Project, (ii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, and (iii) that the Agency has leasehold title, subject only to Permitted Encumbrances, to all property constituting part of the Facility (which certification may be delivered in reliance upon a title insurance continuation update) and all property of the Facility is subject to this Agreement and the lien and security interest of the Agency Mortgage. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. The certificate of completion shall be accompanied by a temporary amended certificate of occupancy (if promptly replaced with a permanent amended certificate of occupancy prior to its expiration) or a permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement.

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

Section 2.4. Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by Agency involvement with the Project shall be limited to purchases of Eligible Materials effected in whole or in part from Bond proceeds or from the Lessee's equity, by or for the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project. The Lessee shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earlier of (w) August 1, 2007, (x) the completion of the Project as provided in Section 2.2 hereof (y) receipt by the Lessee of notice from the Agency of the termination of the Sales Tax Letter, or (z) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

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

"This contract is being entered into by Grogan Realty LLC, a limited liability company organized under the laws of the State of New York (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for Sweet Sams Baking Company, LLC (the "Company"), consisting of the acquisition of an approximately 79,000 square foot parcel of real property located at 1261 Seabury Avenue, Bronx, New York, and the renovation, equipping and improvement of an approximately 51,000 square foot building thereon ("the Facility") to be used by the Company in the manufacture and distribution of baked goods (together with the Facility, the "Project). The construction materials to be incorporated in the Facility 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 purchased and used 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 liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, invoice, bill or purchase order to be, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that the Agency can confer, and the Lessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, unless such claim was made in bad faith, in which case, with interest at eighteen percent (18%) per annum, from the date of such taking.

(c) Concurrently with the issuance of the Series 2004 Bonds, the Agency delivered the Sales Tax Letter to the Lessee. The Agency, at the sole cost and expense of the Lessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Lessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee pursuant to this Agreement and the Sales Tax Letter shall be limited as set forth below:

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2004 Bonds and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) the completion of the Project as provided in Section 2.2 hereof, (3) August 1, 2007 or (4) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended 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 Project Costs for Eligible Materials for incorporation into the Facility Realty.

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

(C) shall only be available if that portion of the Project Cost for which the sales and use tax exemption is sought is paid for and/or reimbursed from the proceeds of the Series 2004 Bonds or from the Lessee's equity,

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

(E) shall not be available for any date after 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,

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

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

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

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

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

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

(iv) In the event that the Lessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.4(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 or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum, unless such utilization was made in bad faith, in which case with interest at eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee.

(v) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend to those Project Costs the payment for which shall first be made from the proceeds of the Series 2004 Bonds or from the Lessee's equity as well as to those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2004 Bonds or from the Lessee's equity.

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

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

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

(e) The Lessee shall on February 28, 2008 and on each February 28 thereafter until the completion of the term hereof file a statement with the New York State Department of Taxation and Finance, on a form (Form ST340 attached hereto as Schedule D or any successor or additional mandated form), and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement of filing with the New York State Department of Taxation and Finance, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further

action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. To the extent permitted by applicable law, the Lessee's status as agent of the Agency shall be re-instated upon the Lessee's compliance with the requirements hereof.

(f) The Lessee shall submit to the Agency on July 31, 2007 and each July 31 thereafter until the completion of the Project, a completed Employment and Benefits Report in form of Schedule B attached hereto to the extent that the Lessee shall have received Sales Tax Savings during the twelve-month period ending on June 30 immediately proceeding such July 31.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

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

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

Section 3.2. Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on June 30, 2030, or such earlier date as this Agreement may be terminated as hereinafter provided (such earlier date hereinafter referred to as the "Expiration Date").

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

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

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

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

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

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

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

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

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

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

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

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

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

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

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

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

lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property, without the consent of or notice to the Agency.

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

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

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

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

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

Section 4.3. Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition of an approximately 79,000 square foot parcel of real property and the renovation, equipping and improvement of an approximately 51,000 square foot building and a 16,000 square foot addition thereon. The Facility Realty is located at 1261 Seabury Avenue, Bronx, New York, being Block 3843 and Lot 45 on the Official Tax Map of Bronx County.

(b) *PILOT Commencement Date:*

Pursuant to the Project Documents executed and delivered in connection with the 2004 Project, the PILOT commenced on July 1, 2005 (the "PILOT Commencement Date").

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

It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property under its jurisdiction or control or supervision or upon its activities. The Agency and the Lessee agree, however, that the Lessee shall be required to make payments in lieu of real estate taxes in accordance with the provisions of Section 4.3(g) hereof, with respect to the Facility Realty as follows: (i) with respect to the Land, in the amounts as determined in subsection (d) below, and (ii) with respect to the Improvements, in the amounts as determined in subsections (e) and (f) below.

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

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

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

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

For the period commencing on the PILOT Commencement Date and ending on the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make payments in lieu of real estate taxes, in accordance with Section 4.3(g) hereof, with respect to the Land (subject to Section 4.3(i)) but only to the extent that Full Land Taxes (as defined below) shall exceed the Maximum Land Tax Abatement for the City Tax Fiscal Year in question:

<u>Year</u>	<u>Maximum Land Tax Abatement</u>
PILOT Commencement Date - June 30, 2026	\$36,000
July 1, 2026 - June 30, 2027	\$28,800

July 1, 2027 - June 30, 2028	\$21,600
July 1, 2028 - June 30, 2029	\$14,400
July 1, 2029 - Expiration Date	\$7,200

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

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

For the period commencing on Expiration Date and ending on the date on which the Agency no longer has a leasehold interest in or control over the Facility Realty, the Lessee shall make payments in lieu of real estate taxes equal to Full Land Taxes with respect to the Land.

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

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

For the period commencing on the PILOT Commencement Date and ending the earliest to occur of (i) the Expiration Date, or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the Termination Date, the Lessee shall make, in accordance with Section 4.3(g) hereof, and subject to Section 4.3(i) hereof, the following payments in lieu of real estate taxes on the Improvements:

- (1) from the PILOT Commencement Date through June 30, 2026, an amount, as determined for each City Tax Fiscal Year, equal to the lesser of Adjusted CRET and STRET; and
- (2) from July 1, 2026, through the Expiration Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

YEAR	LESSEE PAYS:
July 1, 2026 - June 30, 2027	STRET + [(CRET less STRET) x 0.2]
July 1, 2027 - June 30, 2028	STRET + [(CRET less STRET) x 0.4]
July 1, 2028 - June 30, 2029	STRET + [(CRET less STRET) x 0.6]
July 1, 2029 – Expiration Date	STRET + [(CRET less STRET) x 0.8]

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

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

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

(I) the then-current assessed value of Improvements *less* any portion of such assessed value that may be exempt by operation of an ICIP Exemption (if any) applicable to the Improvements (Existing), *and*

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

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

(I) the then-current assessed value of Improvements *less the sum of*

(x) any portion of such assessed value that may be exempt by operation of an ICIP Exemption (if any) applicable to the Improvements (Existing), *and*

(y) the assessed value of the Improvements (Project) (as first assessed upon completion) provided same are exempt by operation of an ICIP Exemption, *and*

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

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

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

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

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

(f) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project (Constructing), the Lessee shall make any alterations of or additions to the Improvements ("**Additional Improvements**"), the Lessee shall: (i) deliver written notice to an Authorized Representative of the Agency of such Additional Improvements within thirty (30) days after the completion thereof; and (ii) request that the Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the City; and (iii)

make additional payments in lieu of real estate taxes in accordance with Section 4.3(g) hereof in an amount which shall equal the product of:

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

(g) *General Payment Provisions:*

In order to provide for payments in lieu of real estate taxes payable pursuant to subsections (d), (e) and (f) above, the Lessee agrees to pay twice a year, seven Business Days before January 1 and seven Business Days before July 1, to the PILOT Depository, or to such other representative of the Agency, or at such other times, 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. The Lessee shall pay a late payment penalty of five per cent (5%) of any amount that is not paid when due under this Section 4.3. In addition, for each month or part thereof that a payment under this Section 4.3 is delinquent beyond the first month, interest shall accrue and be payable by the Lessee on the total amount due as provided above, plus a late payment penalty in the amount of one percent (1%) per month for each month or part thereof until the payment is made.

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

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date that the Agency shall no longer have a leasehold interest in the Facility Realty. Subject to the paragraph immediately succeeding, the Lessee and/or other subsequent owner of the Facility Realty during the City Tax Fiscal Year in which such termination or cessation of the Agency's leasehold interest occurs, shall be responsible for paying the real estate taxes due for the portion of such City Tax Fiscal Year that remains after such termination or cessation of the Agency's leasehold interest.

With respect to the semi-annual period of the fiscal year in which the Agency has ceased to have a leasehold interest in the Facility Realty, the Agency shall cause the Collector of the City to apportion that part of the installment payment in lieu of real estate taxes previously remitted for such semi-annual period (if any), which is attributable to the period commencing on the date of the termination or cessation

of the Agency's leasehold interest and ending on the June 30 or 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, and shall be required throughout the term of this Agreement, to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility Realty, if any, used and/or occupied by any other Person other than the Lessee, for so long as such use and/or occupation shall continue. The Lessee represents to the Agency that no portion of the Facility Realty is used and/or occupied, or is intended to be used and/or occupied, by Persons other than the Lessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if during the term of this Agreement the Lessee ever intends to permit any Person other than itself to use and/or occupy a part of the Facility Realty, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

The Lessee further agrees to furnish the Agency, in substantially the form provided in Schedule B attached hereto, with a certificate of an Authorized Representative of the Lessee on January 1 of each year setting forth inter alia, all Persons other than the Lessee or Affiliates of the Lessee, if any, that shall be utilizing or occupying any portion of the Facility Realty.

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

(j) *QEZE Tax Credits:*

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

In the event the State repeals the Empire Zone program, or that part of it providing for QEZE Credit for Real Property Taxes, and as a result of such repeal the Lessee is no longer eligible to claim the QEZE Credit for Real Property Taxes as they are available under current law, the Lessee shall then make payments in lieu of real estate taxes in accordance with the aforesaid subsections (d), (e) and (f); *provided, however*, that for any period during which the Lessee receives the QEZE Credit for Real Property Taxes, such period shall not be deemed to extend the term during which payments in lieu of real estate taxes, as provided for in the aforesaid subsections (d), (e) and (f), shall apply.

(k) *Survival of Obligations:*

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

Section 4.4. Taxes, Assessments and Charges. The Lessee shall pay when due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Sublease Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the Rental Payments or other amounts payable hereunder or under the Sublease Agreement during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

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

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

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

(ii) Commercial General Liability insurance (including contractual liability coverage, together with any Umbrella Liability insurance), naming the Lessee and the Sublessee as primary insureds, in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per location aggregate (or if the Facility is covered by a multi-site policy, such multiple of that minimum through excess coverage as is satisfactory to the Agency), which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (other than the liability pursuant to Section 6.2(a)(i) or (v) hereof, and with respect to Section 6.2(a)(vi) hereof, only to the extent such insurance is reasonably available), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate,

provided, however, that at least \$500,000 is effected by a Commercial General Liability insurance policy, and (shall not contain any provisions for a self-insured retention or deductible amount, except as may be otherwise approved in writing by the Agency in its sole discretion;

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

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

(b) Specific Coverage required by Section 4.5(a) above shall be procured from and maintained with financially sound and generally recognized responsible insurance companies admitted in the State and authorized to write such insurance in the State, or as otherwise approved by the Agency, and having an A.M. Best rating that is commercially reasonable and customarily required by other enterprises of like size and type as that of the Lessee. The Agency may change such rating requirements on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage.

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

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

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

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

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other

insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest in the Facility;

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

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

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

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

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

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

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

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

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

Section 4.7. Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all 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 may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Agency being in any reasonable danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

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

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Facility to

substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

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

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

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

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

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

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

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

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

filed against the Facility no mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exists no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

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

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

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

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

(i) Nothing contained in this Agreement shall be deemed to modify the obligations of the Lessee pursuant to the Mortgage with respect to casualty insurance proceeds and condemnation awards which the Mortgage shall control the use of such casualty insurance proceeds and condemnation awards.

ARTICLE VI

PARTICULAR COVENANTS

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

Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer.

(b) The Lessee further represents, covenants and agrees that it is and through the term of the Lease Agreement will continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be duly qualified to do business in the State and not constitute a Prohibited Person.

(c) Nothing in this Section 6.1 is intended to prohibit any individual who shall own voting stock or other equity interest in the Lessee from effecting a transfer of voting or equity interest in the Lessee to members of his or her immediate family or to trusts for bona fide good faith estate and gift tax planning purposes, provided however, no such transfer shall relieve such individual from his or her obligations, if any, under the Guaranty Agreement.

Section 6.2. Indemnity. (a) The Lessee shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or the Sublessee or their respective directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Lessee or any other Person who may be about the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to

defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Lessee's knowledge and based on information included in the Phase I Environmental Site Assessment Report Phase I Environmental Assessment Report, prepared by Secor International Incorporated (the "**Environmental Auditor**"), dated March 24, 2004, true and complete copies of which the Lessee has delivered to the Agency (collectively, the "**Audit**"), no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Lessee shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Lessee shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however**, that if any such tenant or subtenant shall be an Affiliate of the Lessee, the obligation of the Lessee with respect to such Persons shall be absolute and not limited to best efforts. The Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency, and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "**Hazardous Materials**" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal,

state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated in Section 4.6 hereof and throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

(d) The indemnifications and protections set forth in this Section 6.2 shall be extended to the Agency and its members, directors, officers, employees, agents and servants and persons under the Agency's control or supervision.

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

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

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

On the date of execution of the Original Lease Agreement, the Lessee paid to the Agency, and the Agency acknowledged receipt of, its financing fee of \$55,500 and its administrative fee of \$2,500. On the date hereof, the Lessee agrees to pay an administrative of \$2,500 and further agrees to pay an annual administrative servicing fee to the Agency in the amount of \$800.00 (subject to an adjustment up or down based on changes as of each November in the Consumer Price Index utilizing a base year of 2005) payable on payable upon the Commencement Date and on every anniversary of the Commencement Date until the termination of this Agreement. For purposes of this Section, "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), for the region New York-Northern N.J.-Long Island, NY-NJ-CT-PA (1982-84=100, unless otherwise noted), as published by the U.S. Department of Labor Bureau of Labor Statistics.

Section 6.4. Retention of Leasehold Title to Facility; Grant of Easements; Release of Facility Realty. (a) The Agency shall not assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its leasehold interest in the Facility or any part thereof during the term of

this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and any purported disposition without such consent shall be void.

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

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

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

Section 6.5. Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee, or the Sublessee or against any of the Rental Payments payable under this Agreement or the Sublease Agreement or the interest of the Agency or the Lessee or the Sublessee under this Agreement or the Sublease Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice

of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement or the Sublease Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) none of the Lessee, the Sublessee or the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee or the Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

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

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

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

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

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

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

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

consider, persons eligible to participate in the Workforce Investment Act of 1998 (P.L. No. 105-220) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee (on behalf of itself and the Sublessee) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the New York City Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “**Information Recipients**”), any and all employment information under its control and pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 and any other applicable laws, rules or regulations. In addition, upon the Agency’s request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee and the Sublessee which is pertinent to the Lessee or the Sublessee and the employees of the Lessee and the Sublessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 48 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or the Sublessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “**Employment Information**”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or The City of New York, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to New York City Local Law 48 of 2005, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

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

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

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

Section 6.13. Identification of Facility Equipment. All machinery, equipment, apparatus and other property constituting Facility Equipment shall be properly identified by the Lessee by such appropriate records and designations as shall be approved by the Agency.

Section 6.14. Subtenant Survey. The Lessee shall file with the Agency by January 1 of each year commencing January 1, 2008, a certificate of an Authorized Representative of the Lessee with respect to all tenancies in effect at the Facility Realty, in the form of the Subtenant Survey attached hereto as Schedule B.

Section 6.15. Contact Information Form. The Lessee shall file with the Agency by July 31 of each year commencing July 31, 2007, the Location and Contact Information Form set forth in Schedule C hereto.

Section 6.16. Lessee's Obligations to Pay Payment-in-lieu of Mortgage Recording Tax. In the event that the Original Mortgage (as amended, restated and modified by the Consolidation Agreement, the "Project Mortgage") remains outstanding on the Expiration Date, the Lessee shall either (i) pay any and all amounts outstanding under the Project Mortgage and arrange for a satisfaction to be delivered on or prior to the termination of this Agreement, or (ii) pay to the Agency a payment-in-lieu of mortgage recording tax in an amount equal to the product of (a) the principal amount then outstanding under the Project Mortgage, and (b) the then-current rate of mortgage recording tax applicable to such Project Mortgage.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

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

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

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

(d) The Lessee or any Guarantor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary

case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee or any Guarantor, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Lessee or any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made (i) by the Lessee or any 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 the Lessee herein or by the Lessee, or by any Guarantor in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to foreclose the lien of Mortgage or of any other mortgage or lien on the Facility Realty;

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

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

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

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

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

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

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

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

(e) 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;

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 6.16, 8.4, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

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

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

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

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

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

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

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

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

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 2.4, 4.3, 6.2, 6.16, 8.4, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.3. Reserved.

Section 8.4. Termination of Agreement. Notwithstanding any other provision of this Agreement to the contrary, on or after the Expiration Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Lessee or any successor thereto shall terminate this Agreement by paying the fees and expenses of the Agency and all other amounts due and payable under this Agreement and any other Project Documents, and thereupon the Lessee execute a deliver a termination agreement, in a form acceptable to the Agency, and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Sections 4.3, 6.2, 6.16, 8.4, 8.5, and 9.13 hereof.

Section 8.5. Recapture of Agency Benefits. It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees as follows:

(a) (i) *Reserved.*

(ii) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after August 1, 2007 (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) If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits; (where "X" is a per cent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

(C) The principal of the Benefits to be recaptured, whether pursuant to (a) or (b) above, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date of the Agency's demand; such that (x) Benefit principal comprising mortgage recording taxes shall be deemed to have accrued to the Lessee on the Commencement 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 savings 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 Commencement 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:

(1) 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

(2) all miscellaneous benefits derived from the Agency’s participation in the straight-lease transaction contemplated by this Agreement and/or in connection with the 2004 Project, including, but not limited to, any exemption from any applicable mortgage recording taxes, sales or use taxes, and filing and recording fees and/or in connection with the 2004 Project.

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

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

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

(4) 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.

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

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

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

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

(9) 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. Notwithstanding anything to the contrary provided herein, the Agency and the Lessee will grant to the Mortgagee a mortgage lien on and a security interest in the Facility Realty pursuant to the Mortgage as security for the payment of amounts due under the various Mortgage Notes. This Agreement shall be subject and subordinate to the Mortgage and to such mortgage liens and security interests so created thereby; provided, however, that nothing in said Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Lessee, subject to the Mortgagee's rights thereunder.

Section 9.3. Assignment or Sublease. (a) The Lessee shall not at any time (i) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility, except pursuant to the Sublease Agreement, without the prior written consent of the Agency (which consent of the Agency will be based upon satisfaction of the Agency's subletting 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 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 Realty 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; and

(ix) each such sublease contains 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 or the Sublessee and the Lessee is in 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, amend, modify, terminate or assign, or to 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 any sub-subletting in whole or in part of the Facility, except that the Sublease Agreement may be assigned as contemplated by any assignment, collateral or otherwise from the Lessee to the Mortgagee, all of the Lessee's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder.

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

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

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

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

(z) if to the Lessee, to Grogan Realty LLC, 1261 Seabury Avenue, Bronx, New York, Attention: David Grogan; with a copy to Stadtmauer Bailkin, LLP, 850 Third Avenue, New York, New York 10022, Attention: Steven P. Polivy, Esq.

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

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

The Agency shall deliver to the Mortgagee a copy of any notice of default or notice of its intent to convey title to the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be delivered at the same time and in the same manner as such notice is required to be given to the Lessee, addressed as follows: if to Mortgagee, to: Citibank, N.A., One Court Square, 43rd Floor, Long Island City, New York 11120, Attention: Betty Pau, Vice President.

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

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

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

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

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

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

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

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

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

Section 9.14. Non-Discrimination. At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate nor permit the Sublessee to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin.

As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

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

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


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

Section 9.16. Amendment and Restatement. This Agreement amends and restates in its entirety the 2004 Lease recorded on September 24, 2004 in the Office of the Register of The City of New York, Bronx County, New York, and as of the Commencement Date, the 2004 Lease shall be of no further force and effect.

Section 9.17. Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the Commencement Date.

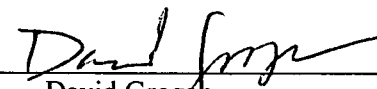
IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairperson, Vice Chairperson, Executive Director or Deputy Executive Director and the Lessee has duly executed this Agreement all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

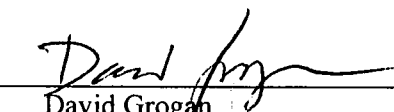
Maureen Babis
Deputy Executive Director

GROGAN REALTY LLC

By: 

David Grogan
Managing Member

SWEET SAMS BAKING COMPANY, LLC

By: 

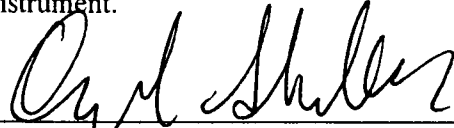
David Grogan
Managing Member

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 4th day of April, in the year 2007 before me, the undersigned, personally appeared Maureen Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public/Commissioner of Deeds

DAVID SHELLEY

Notary Public - State of New York

No. 01SH6122387

Qualified in King County

My Commission Expires February 7, 2009

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

On the 5th day of April in the year 2007, before me, the undersigned, personally appeared David Grogan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

RUDDICK LAWRENCE
Notary Public, State of New York
No. 31-4762183
Qualified in New York County
Commission Expires July 31, 2008

DESCRIPTION OF THE LAND

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

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
3843	45	1261 Seabury Avenue Bronx, New York

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

SCHEDULE A DESCRIPTION

Policy No.: 3207-00014

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

BEGINNING at the corner formed by the intersection of the northerly side of Newbold Avenue (60 feet wide) with the westerly side of Seabury Avenue (60 feet wide);

THENCE westerly along the northerly side of Newbold Avenue, 382.86 feet;

THENCE northerly through the centerline of a party wall and parallel with the westerly side of Seabury Avenue, 206.13 feet to the southerly side of Waterbury Avenue (80 feet wide);

THENCE easterly along the southerly side of Waterbury Avenue, 382.86 feet to the corner formed by the intersection of the southerly side of Waterbury Avenue with the westerly side of Seabury Avenue;

THENCE southerly along the westerly side of Seabury Avenue, 206.13 feet to the corner at the point or place of BEGINNING.

DESCRIPTION OF THE FACILITY EQUIPMENT

“Facility Equipment” shall mean the machinery, equipment and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 of the 2004 Lease Agreement, 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 of the 2004 Lease Agreement, include all property substituted for or replacing items of Facility Equipment (as provided for in the Lease Agreement and the Mortgage) and exclude all items of Facility Equipment so substituted for or replaced.

EMPLOYMENT and BENEFITS REPORT
For the Fiscal Year July 1, 200[] – June 30, 200[] (FY '06)

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **August 1st of each year during the term of Project.**

PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

- 1. Number of permanent Full-Time Employees as of June 30, 200[] _____
- 2. Number of non-permanent Full-Time Employees as of June 30, 200[] _____
- 3. Number of permanent Part-Time Employees as of June 30, 200[] _____
- 4. Number of non-permanent Part-Time Employees as of June 30, 200[] _____
- 5. Number of Contract Employees as of June 30, 200[] _____
- 6. Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3 and 4 _____

For each employee included in this item 6, attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30, 200[].

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

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

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

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

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

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

- 14. Value of sales and use tax exemption benefits \$ _____
- 15. Value of Commercial Expansion Program ("CEP") benefits \$ _____
- 16. Value of Relocation and Employment Assistance Program ("REAP") benefits \$ _____

17. Were physical improvements made to any Project Location during FY '[Y N (please circle Y or N)] at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location?

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

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

Entity Name: _____

Signature By: _____ Date: _____

Name (print): _____ Title: _____

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:

NYC IDA
Attention: Compliance Dept.
110 William Street, 4th Floor
New York, NY 10038

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

DEFINITIONS:

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

"**Company**" includes any entity that is a party to an IDA Lease Agreement.

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

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

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

"**Full-Time Employee**" is an employee who works at least 35 hours per week at the Facility.

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

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

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

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

1- 4. Items 1, 2, 3 and 4 must be determined as of **June 30, 200[]** and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. **Do not include Contract Employees in Items 1, 2, 3 and 4.**

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

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

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

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

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

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

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

20-- subtenant survey

Grogan Realty LLC
1261 Seabury Avenue
Bronx, New York

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

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

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

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

Name: _____

Title: _____

Signature: _____

Date: _____

Phone Number: _____

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

HelpLine: 212-312-3968



LOCATION & CONTACT INFORMATION

Due Date By Facsimile: July 31, 20____

Grogan Realty LLC
1261 Seabury Avenue
Bronx, New York

Eligible Project Location(s):

Please provide the information required below for the location or locations that are receiving benefits from the New York City Industrial Development Agency ("IDA").

Project Address & Floor	Borough	Zip Code	Type of Benefit (Pilot, Sales Tax, etc.)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

* Please use additional pages if necessary *

Please provide below current Project Contact Information:

Name: _____ Title: _____

Address: _____

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

Signature: _____

Backup Contact Name/Title/Phone Number:

FAX YOUR RESPONSE TO: (212) 312-3918

Or mail to:

NYC IDA
Attention: Compliance Dept.
110 William Street, 4th Floor
New York, NY 10038

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

New York State Department of Taxation and Finance

**Annual Report of Sales and Use Tax Exemption
Claimed by Agent/Project Operator of
Industrial Development Agency/Authority (IDA)**
For Period Ending December 31, _____ (enter year)

Project Information

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

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

2. Date project began: _____ / _____ / _____
MM DD YY

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

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

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

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

7. Total sales and use tax exemptions (actual tax savings; NOT total purchases)	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 (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

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

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

What must be reported?

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

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

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

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

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

See instructions below for additional information required.

Project information

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

Name of IDA agent/project operator

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

Name of IDA agent/project operator's authorized representative

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

Name of IDA

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

Name of Project

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

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 a 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 compensatory 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 purchase 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.

When is the report due?

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

Need help?

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

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

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

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

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

Hearing and speech impaired (telecommunications device for the deaf

(TDD) callers only): 1 800 634-2100

(8:30 a.m. to 4:25 p.m., eastern time)



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



If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau. Taxpayer Correspondence.

Privacy notification

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

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

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

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

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Grogan Realty LLC, a New York limited liability company and Sweet Sams Baking Company, LLC (collectively, the "Lessee"), HEREBY CERTIFY that this Certificate is being delivered in accordance with the provisions of Section 2.2(e) of that certain Lease Agreement, dated as of April 1, 2007 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

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

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

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

the Agency has a good and valid leasehold interest in the Facility, and all property constituting the Facility is subject to the Lease Agreement, subject only to Permitted Encumbrances;

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

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

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

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

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

GROGAN REALTY LLC

By: _____
Name:
Title:

SWEET SAMS BAKING COMPANY, LLC

By: _____
Name:
Title: