

LEASE AGREEMENT

Dated as of July 1, 2008

by and between

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

and

**UNITED AIRCONDITIONING CORP. II,
UNITED SHEET METAL CORP.**

and

UAC SERVICE CORP.

\$5,000,000

New York City Industrial Development Agency
Industrial Development Revenue Bonds, Series 2008
(United Airconditioning Corp. II Project)

Affecting the land generally known by the street address
27-02 Skillman Avenue, Long Island City, New York,
in the County of Queens, City and State of New York
as more particularly described in Exhibit B to this
Lease Agreement and which is also known as Block 271, Lot 10

Record and Return to:

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
Attention: H. Sidney Holmes III, Esq.
File No. 90570.274

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of July 1, 2008 (the "Lease 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"), having its principal office at 110 William Street, 4th Floor, New York, New York 10038, party of the first part, and **UNITED AIRCONDITIONING CORP. II**, a corporation duly organized and existing under and by virtue of the laws of the State of New York (the "Company"), **UNITED SHEET METAL CORP.**, a corporation duly organized and existing under and by virtue of the laws of the State of New York and **UAC SERVICE CORP.**, a corporation duly organized and existing under and by virtue of the laws of the State of New York (collectively with the Company, the "Lessee") each having its principal office at 52-16 34th Street, Long Island City, New York 11101, party of the second part:

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee in connection with the financing of certain costs relating to the acquisition, renovation and equipping of an approximately 27,600 square foot manufacturing facility on a 27,792 square foot parcel of land located at 27-02 Skillman Avenue, in Long Island City, New York (the "Facility") to be used by the Lessee in connection with the manufacturing of heating, ventilation, air conditioning and mechanical systems for commercial buildings and the leasing of the Facility from the Company pursuant to the Company Lease Agreement between the Company and the Agency, dated as of July 1, 2008 for subsequent sublease back to the Lessee pursuant to the Lease Agreement, dated as of July 1, 2008, between the Lessee and

the Agency (the construction, renovation, improvement, equipping and furnishing thereof and the costs related thereto, including the cost of issuance of the Series 2008 Bonds (hereinafter defined) are herein referred to as the "Project"); and

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

WHEREAS, the Agency, in order to provide funds for a portion of the cost of the Project and for incidental and related costs thereto, on May 13, 2008 adopted a resolution authorizing the issuance and sale of its Industrial Development Revenue Bonds, Series 2008 (United Airconditioning Corp. II Project), in the aggregate principal amount of \$5,000,000 or such greater amount (not to exceed such stated amount by more than 10%) (the "Series 2008 Bonds") all pursuant to the Act and an Indenture of Trust, dated as of even date herewith (the "Indenture"), by and between the Agency and U.S. Bank National Association, as trustee (the "Trustee"); and

WHEREAS, concurrently with the execution hereof, (i) the Agency and the Lessee will grant mortgage liens on and security interests in their respective leasehold and fee interests in the Facility to the Trustee as security for the Series 2008 Bonds; and (ii) the payment of the principal of, redemption premium, if applicable, and interest on the Series 2008 Bonds, and the payments, obligations, covenants and agreements of the Lessee under this Lease Agreement and all other costs and expenses in connection with the Project and the Series 2008 Bonds will be guaranteed by each of the corporations which comprise the Lessee (the "Company Guarantors") and Josip G. Grgas and Richard C. Veltri (the "Individual Guarantors", together with the Company Guarantors, the "Guarantors") pursuant to a Guaranty Agreement, dated as of even date herewith (the "Guaranty Agreement"), from the Guarantors to the Trustee;

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

ARTICLE I DEFINITIONS AND REPRESENTATIONS

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

Additional Bonds shall mean any Bonds of a Series, other than the Series 2008 Bonds, authorized to be issued pursuant to a Supplemental Indenture and issued under and pursuant to the Indenture.

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 of New York, 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 Mortgage and Security Agreement (Acquisition Cost), dated as of even date herewith from the Agency and the Lessee to the Trustee, and any and all amendments thereof and supplements thereto and assignment of interests therein hereafter made in conformity therewith and with the Indenture.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, or Deputy Executive Director of the Agency, General Counsel or Vice President for Legal Affairs, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of each of the corporations which comprise the Lessee, its Chairman, Vice Chairman, any President, any Vice President or any officer or employee authorized to do specific acts or to discharge certain specific duties hereunder or under any other Security Document and of whom another Authorized Representative of such corporation gives written notice to the Trustee and the Agency.

Bonds shall mean the Series 2008 Bonds and any Additional Bonds.

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

Commencement Date shall mean July 1, 2008 on which date this Agreement was executed and delivered.

Commitment Letter shall mean the Commitment Letter, dated April 18, 2008 from Sovereign Bank to the Company.

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

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

Company Lease shall mean the Company Lease Agreement, dated as of even date herewith, between the Company and the Agency with respect to the Facility, and shall include

any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

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

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

Facility shall mean, collectively, the Facility Realty and the Facility Equipment.

Facility Equipment shall mean those items of equipment, furniture, furnishings or other tangible personalty, if any, acquired for installation or use at the Facility as part of the Project pursuant to Section 2.1 of this Lease Agreement and described in the "Description of Facility Equipment" in the Exhibit C attached hereto and made a part hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. The Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 of this Lease Agreement, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced, and further exclude all items of Facility Equipment removed as provided in Section 4.2 of this Lease Agreement.

Facility Realty shall mean the land described in the "Description of Facility Realty" in the Exhibit B hereto and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto; 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 July 1 and ending on June 30, or such other year of similar length as to which the Lessee shall have given prior written notice thereof to the Agency and the Trustee at least ninety (90) days prior to the commencement thereof.

GAAP means generally accepted accounting principles in the United States as in effect from time to time.

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

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

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

Independent Accountant shall mean shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Lessee and approved by the Agency.

Land shall mean those certain lots, pieces or parcels of land in Block 271, Lot 10 and generally known by the street address 27-02 Skillman Avenue, in Long Island City, New York, all as more particularly described in the "Description of Facility Realty" in the Appendices 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.

Lease Agreement shall mean this Lease Agreement, dated as of July 1, 2008, between the Agency and the Lessee, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

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 the Americans with Disabilities Act of 1990, 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 United Airconditioning Corp. II, United Sheet Metal Corp. and UAC Service Corp., and each of its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

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 reasonable attorneys' fees and any extraordinary expenses of the Agency, the Trustee or the Bondholder) 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 Agency Mortgage, the Lease Agreement, the Company Lease, the Indenture, any other Security Documents and the liens securing a \$1,500,000 line of credit from Sovereign Bank to the Lessee;

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

(iii) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency and the Trustee will not interfere with or impair the Lessee's use of the Facility as provided in the Lease Agreement;

(iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the 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;

(v) those exceptions to title to the Facility enumerated in the leasehold title insurance policy delivered pursuant to Section 2.4 hereof insuring the leasehold estate of the Agency to the Facility Realty, copies of which are on file at the offices of the Agency as are approved by the Initial Bondholder, the Agency and the Trustee;

(vi) 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 6.7 hereof; and

(vii) any mortgage, lien, security interest, encumbrance or other encumbrance which exists in favor of the Trustee or to which the Trustee, the Agency and the Initial Bondholder shall consent.

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or any agency or political subdivision thereof or other entity.

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

Project shall mean the acquisition, renovation and equipping of an approximately 27,600 square foot manufacturing facility located at 27-02 Skillman Avenue, in Long Island City, New York (the "Facility"), in accordance with the Project Description annexed as Exhibit A hereto, to be used by the Lessee in connection with the manufacturing of heating, ventilation, air conditioning and mechanical systems for commercial buildings.

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

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

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

Security Document shall mean collectively and severally, the Indenture, the Agency Mortgage, the Lease Agreement, the Company Lease, the Guaranty Agreement and the Tax Certificate.

Series 2008 Bonds shall mean the \$5,000,000 or such greater amount (not to exceed such stated amount by more than 10%) Industrial Development Revenue Bonds, Series 2008 (United Airconditioning Corp. II Project) of the Agency issued under the Indenture.

State shall mean the State of New York.

Tax Certificate shall mean the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986, dated as of even date herewith, between the Agency and the Lessee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Termination Date shall have the meaning ascribed to such term in Section 3.2(a) hereof.

Trustee shall mean U.S. 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 Lease Agreement, unless the context otherwise requires:

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

(b) In order to finance a portion of the cost of the Project, the Agency proposes to issue the Series 2008 Bonds in the aggregate principal amount of \$5,000,000 or such greater amount (not to exceed such stated amount by more than 10%). The Series 2008 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 Lease Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the leasing thereof to the Lessee is reasonably necessary to induce the Lessee to proceed with the Project.

Section 1.5 **Representations and Warranties by Lessee.** The Lessee, jointly and severally, makes the following representations and warranties as to each corporation which the Lessee is comprised of:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of incorporation or by-laws, has all requisite legal and corporate right, power and authority and all necessary licenses and permits to own, lease and operate the Facility and to carry on its business as now conducted and as presently proposed to be conducted by it and to execute, deliver and perform this Agreement.

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

(c) Expenses for supervision by the officers or employees of the Lessee and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such persons were specifically employed for such particular

purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Lessee as a capital expenditure in conformity with GAAP applied on a consistent basis.

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

(e) The completion of the Project will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Lessee or any Affiliate thereof from outside the City (but within the State of New York) to within the City or in the abandonment of one or more of such plants or facilities of the Lessee or any Affiliate thereof within the State but outside of the City.

(f) The total cost of the Project being funded with the Series 2008 Bonds is at least \$5,000,000, which represents only a portion of the total cost to the Lessee.

(g) Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2008 Bonds shall be treated on the books of the Lessee as capital expenditures in conformity with GAAP applied on a consistent basis.

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

(i) No part of the proceeds of the Series 2008 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 Lease Agreement and the other Security Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

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

(m) There is no action or proceeding pending or to the best knowledge of the Lessee threatened by or against the Lessee by or before any court or administrative agency that might adversely affect the business, operations or condition, financial or otherwise, of the Lessee, or the ability of the Lessee to perform its obligations under this Lease Agreement and each other Security Document to which the Lessee shall be a party.

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

(o) No part of the proceeds of the Series 2008 Bonds will be used to finance a project where facilities or property that are primarily used in making retail sales to customers who

personally visit such facilities constitute more than one third of the total project cost. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York State Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York State Tax Law; or (ii) sales of a service to such customers.

(p) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Lessee in connection with the execution and delivery of this Lease Agreement and each other Security Document to which the Lessee shall be a party, or in connection with the leasing of the Facility by the Lessee to the Agency concurrently with the issuance and delivery of the Series 2008 Bonds, have been duly obtained.

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

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

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

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

(ii) has been convicted of a misdemeanor and/or found in violation of any administrative, statutory, or regulatory provision in the past five (5) years;

(iii) has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

(iv) has any felony, misdemeanor and/or administrative charges currently pending;

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(vi) has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person was acquired by the City by *in rem* tax foreclosure other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

(t) The aggregate rentable square footage of the improvements constituting the Facility Realty will be approximately 27,600 rentable square feet and the aggregate square footage of the Land is approximately 27,792 square feet.

(u) The representations contained in the Tax Certificate are true and correct as of the date of the Tax Certificate and are incorporated by reference into this Agreement as if fully set forth herein.

- (v) (i) The Fiscal Year of the United Airconditioning Corp. II ends on December 31.
- (ii) The Fiscal Year of the UAC Service Corp. ends on December 31.
- (iii) The Fiscal Year of the United Sheet Metal Corp. ends on August 31.

(w) Neither the Lessee, nor any related party to the Lessee as defined in Treasury Regulation Section 1.150-1(b) will purchase any of the Series 2008 Bonds in an amount related to the amount of the purpose investment acquired from the Lessee by the Agency.

(x) The Lessee has not entered into a contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Facility Realty except (i) as otherwise permitted by the Security Documents and (ii) for the Lessee's arrangements with the Lessee's architect, the General Contractor and contractors or subcontractors who have filed lien waivers in form approved by the Bondholder for all payments due under such arrangements as of the end of the period covered by the last requisition.

(y) No portion of the proceeds of the Series 2008 Bonds will be used to finance or refinance any costs other than Project Costs.

(z) To the best of Lessee's knowledge and subject to the Phase I, the Facility is not now and has not ever been used to generate, manufacture, store, handle, dispose, produce or in any manner deal with hazardous materials (as defined by federal, state or local environmental law) and that no owner of the Facility nor any tenant or occupant has received any notice from any governmental agency with regard to hazardous materials on or affecting the Facility.

ARTICLE II THE PROJECT

Section 2.1 **The Project.** (a) Pursuant to the Company Lease, the Company shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2008 Bonds a leasehold interest in the Facility 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 2008 Bonds deposited in the Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture.

(b) Promptly after receipt of the proceeds of sale of the Series 2008 Bonds and out of said proceeds of sale, the Agency will, subject to the provisions of Section 2.2 hereof, cause the Lessee, on behalf of the Agency, to complete the Project. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof.

(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 completion.

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

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

(f) Upon request, the Lessee will extend to the Trustee and the Initial Bondholder all vendors' warranties 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 actions and proceedings instituted by the Lessee 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, and all expenses incurred by the Lessee or the Agency in connection with the performance of their obligations under this Section, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

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

Lessee shall take all action necessary to protect the leasehold interest of the Agency in the Facility Equipment against claims of any third parties.

(i) In connection with any requisition from the Project Fund, the Lessee hereby covenants to comply with the terms and conditions of Section 5.02 of the Indenture.

(j) The Lessee acknowledges the following requirements which must be satisfied prior to any disbursement from the Project Fund:

(i) All conditions of the Commitment Letter shall have been and remain satisfied as of the date of such advances in the Initial Bondholder's sole discretion;

(ii) The representations and warranties made herein and in the Security Documents shall be true and correct on and as of the date of each requisition with the same effect if made on such date and the receipt of funds requested by the Lessee shall constitute an affirmation that the representations and warranties contained herein and in the Security Documents remain true and correct as of the respective dates of each requisition;

(iii) There shall exist no default under the Security Documents, irrespective of whether or not the event of default shall constitute an event of default under the Indenture; and

(iv) The Project or the Facility Realty shall not have been materially injured or damaged by fire or other casualty unless the Trustee shall have received insurance proceeds (to be applied in accordance herewith and with the Indenture) sufficient in the judgment of the Initial Bondholder to effect the satisfactory restoration of the Project and to permit completion of the Project prior to the Completion Date.

(k) The Facility has been designed 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 Company has operated the Facility or caused the Facility to be operated in accordance with this Agreement and as a qualified "project" in accordance with and as defined under the Act.

(l) The information set forth in the Certificate as to Representations and Information Regarding Arbitrage, executed by the Company, is true and correct as of the date of such Certificate and are incorporated by reference into this Agreement as if fully set forth herein.

Section 2.2 **Completion by Lessee.** (a) The Lessee unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by July 1, 2010 to be evidenced by 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, but in no event no later than January 1, 2011), and that such completion will be effected in a first-class workmanlike manner, free of defects in materials or workmanship (including latent defects), in accordance with this Lease Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee, or the Bondholders (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 Lease Agreement.

(b) Promptly following the completion of the Project, (i) the Lessee shall deliver to the Agency, the Bondholder and the Trustee a certificate of an Authorized Representative of the Lessee substantially in the form set forth in Appendix B attached hereto, together with all attachments required thereunder and such other matters as may be required by the Bondholder, this Lease Agreement or the Indenture.

Section 2.3 **Issuance of Series 2008 Bonds.** (a) Contemporaneously with the execution and delivery of this Lease Agreement, the Agency will sell and deliver the Series 2008 Bonds in the aggregate principal amount of \$5,000,000 or such greater amount (not to exceed such stated amount by more than 10%) under and pursuant to a resolution adopted by the Agency on May 13, 2008 authorizing the issuance of the Series 2008 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2008 Bonds equal to (i) the interest accruing on the Series 2008 Bonds to the date of delivery thereof, if any, shall be deposited in the Interest Account of the Bond Fund and (ii) the balance of the proceeds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the provisions of the Indenture. Pending such application, amounts in the Project Fund may be invested as provided in the Indenture.

(b) The application of the proceeds of the sale of the Series 2008 Bonds is subject to the "trust fund" provisions of Section 13 of the Lien Law of the State. The Lessee shall receive all advances of the proceeds of the Series 2008 Bonds hereunder or under the Indenture and will hold the right to receive the same as a trust fund for the purpose of the cost of the improvement and shall apply the same first to such payment before using any part thereof for any other purpose permitted hereunder or under the Indenture. The proceeds of the Project Fund shall only be released by the Trustee in accordance with the terms of the Indenture, this Lease Agreement and the Commitment Letter.

Section 2.4 **Title Insurance.** Not later than the delivery of the Series 2008 Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) leasehold title insurance in an amount not less than \$500,000 insuring the Agency's leasehold interest in the Facility under the Company Lease against loss as a result of defects in the leasehold interest of the Agency, (b) mortgagee title insurance in an amount not less than \$5,000,000 or such greater amount (not to exceed such stated amount by more than 10%) insuring the Trustee's interest under the Agency Mortgage as holder of a mortgage lien on the Facility with respect to the fee title and leasehold interest of the Lessee and the Agency, respectively, in each case subject only to Permitted Encumbrances, (c) a current survey of the site of the Facility certified to the Agency, the Trustee, the Lessee and the Initial Bondholder and (d) all of the items and comply with all of the conditions set forth herein and in the Indenture. The title insurance policies shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Agency and the Trustee and the Initial Bondholder; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement referred to in Section 5.02(c) of the Indenture; (4) such endorsements as the Initial Bondholder shall require; and (5) such other matters as the Agency, the Initial Bondholder and/or the Trustee shall reasonably request. Any proceeds of

such leasehold title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in the Agency's leasehold interest. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be deposited by the Trustee in the Redemption Account of the Bond Fund. Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Trustee's interest as holder of a mortgage lien on the Facility shall be paid to the Trustee and deposited by the Trustee in the Redemption Account of the Bond Fund.

Section 2.5 **Limitation on Sales Tax Exemption.** (a) Any exemption from Sales Taxes resulting from or occasioned by Agency involvement with the Project shall be limited to purchases of Eligible Materials effected in whole from Bond proceeds by or for the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency involvement with the Project. The Lessee shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earliest of (i) July 1, 2010, (ii) the completion of the Project as provided in Section 2.2 hereof, (iii) receipt by the Lessee of notice from the Agency of the termination of the Sales Tax Letter, or (iv) 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 United Airconditioning Corp. II, a corporation 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 United Airconditioning Corp. II, United Sheet Metal Corp. and UAC Service Corp. consisting of (i) the acquisition of an approximately 27,600 square foot building on an approximately 27,972 square foot parcel of land and (ii) the renovating of such building located at 27-02 Skillman Avenue, in Long Island City, New York (the "Premises"). The construction materials to be incorporated in the Premises which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency and the Agent hereby represents that this [contract, agreement, invoice, bill on purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

If the Lessee shall fail to include, incorporate by reference or otherwise cause the contract, invoice, bill or purchase order to be, subject to the above applicable language in

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

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

(i) The Sales Tax Letter shall be dated the date of original issuance of the Series 2008 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) July 1, 2010, 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 upon thirty (30) days notice to the Lessee that (y) the Lessee shall be in default under this Agreement until the Lessee shall pay any amounts due, and perform all of its obligations with respect to any such default, or (z) the Agency shall determine within its sole discretion that the Lessee or Sublessee or any Affiliate of the Lessee or the Sublessee or any Principal of the Lessee, the Sublessee or any Affiliate of the Lessee or the Sublessee or any Principal of the Lessee, the Sublessee or of any such Affiliate has committed a material violation of a material Legal Requirement, in which event such suspension shall continue until such time as the Agency shall determine, within its sole discretion (a copy of which determination shall be delivered to the Lessee) to waive such suspension or that such material violation of a material Legal Requirement has been cured to the Agency's satisfaction.

(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 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), 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 at the Facility Realty,

(C) shall only be available if that portion of the Project Cost for which the sales and use tax exemption is sought is paid for in whole and/or reimbursed in whole from the proceeds of the Series 2008 Bonds,

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

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

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

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

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

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

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

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

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

(v) The sales and use tax exemption authorizations provided to the Lessee under the Sales Tax Letter and this Agreement availed of by the Lessee shall extend both to those Project Costs the payment for which shall first be made from the proceeds of the Series 2008 Bonds as well as to those Project Costs the payment of which is to be reimbursed from the proceeds of the Series 2008 Bonds.

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

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

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

(e) The Lessee shall, on February 28, 2009 and on each February 28 thereafter until the termination of this Agreement, file a statement with the New York State Department of Taxation and Finance, on a form (Form ST-340 attached hereto as Appendix I or any successor or additional mandated form), and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee or agents of the Lessee in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the Agency immediately after the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement of filing with the New York State Department of Taxation and Finance, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Lessee by the Agency which is in the Lessee's possession or in the possession of any agent of the Lessee. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State. To the extent permitted by applicable law, the Lessee's status as agent of the Agency shall be re-instated upon the Lessee's compliance with the requirements hereof.

ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 **Lease of the Facility.** Pursuant to the Company Lease, the Company has leased the Facility to the Agency. The Agency hereby sub-subleases to the Lessee and the Lessee hereby sub-subleases from the Agency the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Lessee shall at

all times during the term of this Lease Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a manufacturing facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Lease 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. In no event, however, shall the Lessee permit (a) occupancy of more than ten percent (10%) of the rentable square footage of the Facility by any individual or entity or (b) occupancy of the Facility in violation of Section 9.3 hereof.

Section 3.2 **Duration of Term.** (a) The term of this Lease Agreement shall commence on the date of issuance of the Series 2008 Bonds and shall expire on June, 30 2034 (midnight, New York City time) or such earlier date as this Lease Agreement may be terminated as hereinafter provided (such earlier date hereinafter referred to as the "Termination Date"). The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Facility as the Agency has received under the Company Lease.

(b) Notwithstanding the foregoing, the Bonds shall mature on July 1, 2023.

Section 3.3 **Rental Provisions; Pledge of Agreement and Rent.**

(a) For so long as the Bonds shall remain Outstanding the Lessee shall make rental payments to the Agency as provided in subsections (a) through (k) (inclusive) of this Section 3.3. The Lessee covenants to make rental payments which the Agency agrees shall be paid by the Lessee directly to the Trustee on each Lease Rental Payment Date for deposit in the Bond Fund, in accordance with the Bonds, in an amount equal to the sum of:

(i) with respect to interest due and payable on the Bonds, an amount equal to the interest next becoming due and payable on the Bonds on the immediately succeeding Interest Payment Date (less any amount available in the Project Fund for transfer to the Interest Account of the Bond Fund),

(ii) with respect to principal due and payable on the Bonds, an amount equal to the principal payments becoming due and payable on the Bonds on the immediately succeeding Payment Date in accordance with the Bonds,

(iii) the principal amount of the Bonds then Outstanding which will become due on the immediately succeeding Interest Payment Date (whether at maturity or by redemption or acceleration as provided in the Indenture), and

(iv) the principal of and redemption premium, if any, on the Bonds to be redeemed which will become due on the immediately succeeding redemption date together with accrued interest to the date of redemption.

The Lessee further agrees to pay such additional amounts as set forth in the Indenture with respect to interest on the Series 2008 Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, 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.

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

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

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

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

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

(h) The Lessee covenants and agrees to provide to the Trustee for deposit into the Rebate Fund sufficient moneys as necessary to meet the Rebate Requirement described in the Tax Certificate.

(i) Throughout the term of this Agreement, 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.

(j) *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.

(k) Missed Payments. In the event the Lessee should fail to make or cause to be made any of the rental payments required under the provisions of subsection (i) above, 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 **Obligation of Lessee Unconditional.** The obligation of the Lessee to pay the rent and all other payments provided for in this Lease Agreement and to maintain the Facility in accordance with Section 4.1 of this Lease Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee or the Bondholder and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Lease Agreement. The Lessee will not suspend or discontinue any such payment or terminate this Lease 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 Lease Agreement or any obligation of the Lessee under this Lease Agreement or the Facility or any part thereof except as provided in this Lease 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, and in and to the machinery, equipment and other property constituting part of the Facility Equipment, and in and to the proceeds of each thereof.

Section 3.6 **Right of Set-Off.** The Lessee hereby grants to the Agency and the Trustee, for the equal and ratable benefit of Bondholder, a lien and right of set-off for all the Lessee's liabilities and obligations under this Lease 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 or under the control of the Agency and the Trustee 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 Lease Agreement.

ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 **Maintenance, Alterations and Improvements.** (a) During the term of this Lease 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 Lease Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary,

structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure that the security for the Bonds shall not be materially impaired. All replacements, renewals and repairs shall be 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) After the initial renovations and improvements with respect to the Project are completed in accordance with the Indenture and this Lease 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 their value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) such additions or alterations are made, in case the estimated cost of such alteration or addition exceeds \$250,000, or in the case such alteration or addition shall affect any structural element of the Facility, under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Agency, the Trustee and the Bondholder (which approval shall not be unreasonably withheld and, so long as the initial purchaser of the Bonds continues to hold the Bonds, shall be given only at the direction of a majority in aggregate principal amount of the Bonds Outstanding) and only after the Lessee shall have furnished to the Agency and the Trustee, if reasonably requested, a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Trustee, and (v) such additions or alterations do not change the nature of the Facility so that they would not constitute a manufacturing facility and a qualified "project" as defined in and as contemplated by the Act. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to the Company Lease, this Lease Agreement, the Indenture and the Agency Mortgage, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to subject such property to the Company Lease and this Lease Agreement and the lien and security interest of the Indenture and the Agency Mortgage, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility Realty machinery, equipment, furniture, furnishings and other personal property not constituting part of the Facility Equipment (the "Lessee's Property") without subjecting such property to the Company Lease or this Lease Agreement and the lien and security interest of the Agency Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall not have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

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

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

Section 4.2 **Removal of Property of the Facility.** (a) The Lessee shall have the privilege from time to time, with the prior written consent of the Bondholder, of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment, furniture, furnishings or other property constituting part of the Facility Equipment (the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided that:

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

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration in excess of \$250,000, the Lessee shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts in excess of \$250,000 derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition;

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

(b) The Lessee shall deliver or cause to be delivered to the Agency, the Trustee and the Bondholders appropriate documents subjecting such substitute or replacement property to the Company Lease and this Lease 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 conveying to the Lessee all of the Agency's right, title and interest, if any, to any property removed from the Facility pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to the Company Lease and this Lease Agreement and the lien and security interest of the Agency Mortgage any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

(c) The Lessee shall not, without the prior written consent of the Agency and the Bondholders and except as permitted above, part with possession or control of or suffer to allow to pass out of its possession or control any item of the Facility Equipment or change the location of the Facility Equipment or any part thereof from the Facility Realty; provided, however, it is acknowledged that Affiliates of the Lessee may operate or utilize, at the Facility Realty, the Facility Equipment or any part thereof.

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

(e) Within one hundred twenty (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 Bondholder 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 its opinion, such action complied with the applicable provisions of Section 4.1(b) and Section 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 Section 4.2(a) hereof, the Lessee shall furnish to the Agency 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 Section 4.2(a) during such preceding Fiscal Year.

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

(a) *Address of Project:*

The Facility Realty is located at 27-02 Skillman Avenue, in Long Island City, New York 11101, being Block 271 and Lot 10 on the Tax Map of Queens 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) June 30, 2034 (the "Expiration Date"), or (ii) the date on which the Agency no longer has a leasehold estate in the Facility Realty, or (iii) the date this agreement is terminated, if terminated prior to the Expiration Date (such earliest date being 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, 2030	\$60,000
July 1, 2030 – June 30, 2031	\$48,000
July 1, 2031 – June 30, 2032	\$24,000
July 1, 2032 – June 30, 2033	\$36,000

July 1, 2033 – Expiration Date

\$12,000

“PILOT Commencement Date” shall mean July 1, 2009.

“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 on 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, 2030, an amount, as determined for each City Tax Fiscal Year, equal to the lesser of Adjusted CRET and STRET; and

(2) from July 1, 2030 through the Termination Date, the following amounts as respectively calculated for the following City Tax Fiscal Years:

<u>Year</u>	<u>Lessee Pays:</u>
July 1, 2030 – June 30, 2031	STRET + [(CRET less STRET) x 0.2]
July 1, 2031 – June 30, 2032	STRET + [(CRET less STRET) x 0.4]
July 1, 2032 – June 30, 2033	STRET + [(CRET less STRET) x 0.6]
July 1, 2033 – June 30, 2034	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*
- (II) 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, 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*

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 on a date which is seven (7) Business Days before January 1 and on a date which is seven (7) Business Days before July 1 of every year to the PILOT Depository, or to such other representative of the Agency, or at such other times, in either case as the Agency may designate from time to time by written notice to the Lessee, by certified check or bank draft payable at a bank in New York, New York, an installment payment equal to one-half of the payment in lieu of real estate taxes due for such year. The PILOT Depository shall deposit such installment payment to a special trust fund.

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

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

Nothing contained herein shall limit or impair the Lessee's right, to the extent permitted by law, to obtain reductions in the valuation of the Facility Realty or the right to obtain

exemptions (and discounts, if any) therefrom and to seek to obtain a refund of any such payments made.

(h) *Apportionment of Payments after Transfer:*

The Agency shall cause the Collector of the City to return the Facility Realty to the tax rolls as of the date 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 January 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, (y) as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold estate in that portion of the Facility, if any, utilized or occupied by any Person (other than the Lessee but including any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) for so long as such utilization and/or occupation shall continue, and (z) an amount equal to that amount of taxes with respect to the Facility Realty that the Lessee would otherwise have been required to pay from time to time if it were the owner of the Facility Realty and the Agency had no leasehold or other interest in the Facility Realty ("Full Real Estate Taxes"), in the event the Agency shall determine within its sole discretion that the Lessee or any Affiliate of the Lessee or any Principal of the Lessee or any such Affiliate has committed a material violation of a material Legal Requirement and deliver notice of such determination to the Lessee, and the Lessee's obligation in such event to pay Full Real Estate Taxes shall continue until such time as the Agency shall determine, within its sole discretion (a copy of which determination shall be delivered to the Lessee), to waive the requirement that the Lessee pay Full Real Estate Taxes or such material violation of a material Legal Requirement has been cured to the Agency's satisfaction. The Lessee hereby represents to the Agency that no portion of the Facility is utilized and/or occupied or is intended to be utilized and/or occupied by Persons other than the Lessee or the Sublessee or a sublessee that is pre-approved pursuant to Section 9.3 hereof, if any. The Lessee agrees that if ever during the term of this Agreement the Lessee intends to permit any Person (other than itself, the Sublessee or any sublessee that is pre-approved pursuant to Section 9.3 hereof, if any) to use and/or occupy a part of the Facility, then, in such event, the Lessee shall provide to the Agency's Authorized Representative, written notice of such intended use and/or occupancy before such use and/or occupancy actually occur, and

shall also obtain from the Agency prior written consent therefor in accordance with the requirements of Section 9.3 hereof.

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

(j) *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 Company Lease, any estate or interest of the Agency or the Lessee in the Facility, or the rental payments or other amounts payable hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions (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.

None of the foregoing shall prevent the Lessee from contesting in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Agency, the Bondholder or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be requested by the Agency, the Bondholder or the Trustee to protect the security intended to be offered by the Security Documents in a manner such that the lien of the Agency Mortgage is not impaired in any way.

Section 4.5 **Insurance.** (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance 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), inclusive, of this Section 4.5 include, without limitation (hereinafter "Specific Coverage"):

(i) During any period of construction, renovation, improvement or reconstruction of any portion of the Facility, to the extent not covered by the commercial general liability insurance referred to below, owners and contractors protective liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$5,000,000 for the Facility (or such lesser amount agreed upon by the Agency, the Trustee and the Bondholder upon written request by the Lessee) aggregate coverage for bodily and personal injury and property damage;

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

(iii) Commercial general liability insurance (including contractual liability coverage, together with any umbrella liability insurance) naming the Lessee as the primary insured, and the Agency and the Trustee as additional 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 for the Facility Realty (or such lesser amount agreed upon by the Agency and the Bondholder upon written request by the Lessee) per occurrence per location aggregate, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof (excluding, however, those obligations of the Lessee (1) requiring payment of taxes, (2) set forth in Section 6.2(a)(i), (iv) or (vi) hereof and (3) under Section 6.2(a)(viii) hereof to the extent not available to the Lessee at commercially reasonable rates), and (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$500,000 is effected by a General Liability insurance policy, and (C) shall not contain any provisions for a self-insured retention or deductible amount, except as may be otherwise approved in writing by the Agency in its sole discretion;

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the

Lessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; and;

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

(vi) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) All Specific Coverage required by Section 4.5(a) above shall be procured 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 in future years on a nondiscriminatory basis if required by substantial changes in insurance industry premiums, risks or coverage. At least once every two fiscal years, the Lessee agrees to deliver a certificate of an independent insurance consultant to the Trustee which indicates that the insurance then maintained by the Lessee meets the requirements of Section 4.5(a) hereof.

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

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

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility (except as otherwise provided in Section 4.5(d) below) be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause and the Trustee as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee to be deposited in the Renewal Account of the Project Fund;

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

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

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

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

(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 or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility (except if such Net Proceeds so received for any Loss Event shall be less than \$250,000 in which event such Net Proceeds shall be paid directly to the Company and applied by the Company to the rebuilding, replacement, repair and restoration of the Facility with any excess to be retained by the Company, subject to the terms and conditions of the Agency Mortgage) shall be deposited in the Renewal Account of the Project Fund and applied in accordance with the Indenture.

(e) Concurrently with the original issuance of the Series 2008 Bonds, the Lessee shall deliver or cause to be delivered to the Agency and the Trustee, in a form acceptable to the Agency and the Trustee, the following documents evidencing compliance with the Specific Coverage requirements of this Section 4.5: (i) on or prior to the Closing Date: (A) a broker's certificate of coverage, upon which the Agency and the Trustee Issuer may conclusively rely in order to confirm compliance with the requirements of this Section 4.5(e), confirming that the Lessee, as of the Closing Date, has obtained insurance in accordance with the requirements of this Section 4.5, and (B) a certificate of liability insurance and certificates or other evidence of other required insurance, and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Trustee and the Bondholder with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

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

Section 4.6 **Advances by Agency or Bondholders.** In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Lease Agreement, the Agency or any Bondholder, after first notifying the Lessee of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency or such Bondholder under this Lease 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 such Bondholder shall become an additional obligation of the Lessee to the Agency or such Bondholder, which amounts, together with interest thereon at the rate of eighteen percent (18%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency or such Bondholder. Any remedy herein vested in the Agency, the Trustee or Bondholders for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency or such Bondholder for the collection of all such amounts so advanced.

Section 4.7 **Compliance with Legal Requirements.** The Lessee agrees that it will, throughout the term of this Lease Agreement and at its sole cost and expense, promptly observe and comply with all Legal Requirements, 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, 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 Trustee and the Bondholder, 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 shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein

being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee, the Agency, the Trustee or the Bondholder being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be requested by the Agency, the Trustee or the Bondholder 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 Lease Agreement the whole or part of the Facility shall be damaged or destroyed, or be taken or condemned by a competent authority for any public use or purpose, or by agreement between the Lessee and those authorized to exercise such right, or if the temporary use of the Facility or any part thereof shall be so taken by condemnation or agreement (a "Loss Event"):

- (i) the Agency and the Bondholder 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 Lease Agreement or under any other Security Document; and
- (iii) the Lessee will promptly give written notice of such Loss Event to the Agency and the Trustee, generally describing the nature and extent thereof.

(b) Upon the occurrence of a Loss Event, (y) if the Net Proceeds derived therefrom shall be less than \$250,000, the Net Proceeds shall be paid to the Lessee and applied to rebuild, replace, repair or restore the Facility, and (z) if the Net Proceeds derived therefrom shall be equal to or greater than \$250,000, the entirety of same shall be paid to the Trustee and deposited in the Renewal Fund and the Bondholder shall have the option, exercisable within seventy-five (75) days after the occurrence of a Loss Event, to either permit the Lessee to rebuild, replace, repair or restore the Facility (as hereinafter provided) or to demand that the Lessee redeem the Bonds in accordance with Section 2.03(b) of the Indenture. Upon receipt of direction from the Bondholder, the Lessee shall either:

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

- (ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to terminate this Lease Agreement, cause the Bonds to be redeemed in whole and, upon compliance with Section 8.1 hereof (other than in the case of a taking or condemnation of the Facility), receive from the Agency documents conveying or reconveying to the Lessee the Agency's leasehold interest in the Facility.

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

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee as such work progresses, 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 Lease Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund to be applied to the redemption of the Bonds in accordance with the Indenture.

- (c) All such rebuilding, replacements, repairs or restorations shall
 - (i) automatically be deemed a part of the Facility, be subject to the Company Lease and this Lease 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 Trustee and the Bondholder,
 - (iii) not change the nature of the Facility as a "manufacturing facility" and a qualified "project" as defined in and as contemplated by the Act,
 - (iv) to the extent required by Section 4.1(e) hereof, be preceded by the furnishing by the Lessee to the Agency and the Trustee of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency, the Trustee and the Bondholder,
 - (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 and in accordance with the plans and specifications approved by the Agency, the Bondholder and the Trustee.

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

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

(f) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders all of the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Lease Agreement pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Lessee shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agents (including counsel fees and expenses), together with all other amounts due under the Indenture and under this Lease Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date. The balance of any funds, if any, shall be applied as provided in Section 6.10 hereof.

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

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

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 **Restrictions on Lessee.** The Bonds will be payable by the Agency as to principal, interest and redemption premium, if any, out of the revenue derived from the leasing of the Facility, including all revenues and rental income derived from or in connection with the Facility and moneys received under this Agreement, and the parties hereto understand that the purchasers of the Bonds will make their purchase in reliance in part upon the credit and financial condition of the Lessee. The Lessee agrees that at all times during the term of this Agreement it will (i) maintain its existence; (ii) continue to be a corporation subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State; (iii) not sell,

transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Facility; (iv) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement; (v) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; (vi) keep true and accurate books of account in accordance with GAAP, and maintain its current fiscal year; (vii) (1) maintain its corporate existence, business and assets, (2) keep its business and assets adequately insured, (3) maintain its chief executive office in the location which it has identified as such to the Initial Bondholder, (4) continue to engage in the same or related lines of business, and (v) comply with all rules, laws, orders, judgments, statutes and regulations, including ERISA and Environmental Laws; (viii) notify the Initial Bondholder promptly in writing of (1) the occurrence of any Event of Default, (2) any noncompliance or any Environmental law or proceeding in respect thereof, (3) any change of address of its chief executive office, and (4) any pending litigation and proceedings affecting the Lessee or to which the Lessee is or becomes a party involving an uninsured claim against the Lessee and stating the nature and status of such litigation or proceedings. In addition, the Lessee will give notice to the Initial Bondholder in writing, in form and detail satisfactory to the Initial Bondholder, within ten (10) days of (a) any final judgment not covered by insurance against the Lessee in an amount in excess of \$100,000 or (b) any material adverse change in any such litigation or proceeding previously reported; (ix) notify the Initial Bondholder promptly of the creation or acquisition, as the case may be, of any subsidiary or affiliate; (x) not create, incur or assume any indebtedness in excess of \$500,000 other than indebtedness created by the Security Documents; (xi) not create, incur or permit to exist any Liens on any of the property or assets, now or hereafter owned, of the Lessee other than Permitted Encumbrances; (xii) not cause or permit any of its properties or assets to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process "Hazardous Materials" (as defined below), except in compliance with all applicable federal, state and local laws or regulations, or cause or permit, a release of Hazardous Materials onto such property or asset or onto any other property, except in compliance with such laws and regulations. "Hazardous Materials" shall mean any explosive, radioactive materials, or other materials, wastes, substances, or chemicals regulated as toxic, hazardous or as a pollutant, contaminant or waste under any applicable Environmental Law; and (xiii) not enter into any transaction, including, without limitation, the purchase, sale or exchange of property or the rendering of any service, with any affiliate, except in the ordinary course of and pursuant to the reasonable requirements of such person's business and upon fair and reasonable terms no less favorable to such person than they would obtain in a comparable arms-length transaction with a person not an affiliate. The Lessee may, however, without violating the foregoing and with the prior written consent of the Bondholder (which may be withheld in its sole discretion), consolidate with or merger into another entity or permit one or more other entities to consolidate with or merge into it, or sell by public offering or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if (i) the Lessee is the surviving, resulting or transferee entity, as the case may be, and the resulting entity has a net worth at least equal to that of the Lessee prior to such merger or consolidation or otherwise acceptable to a majority in interest of the Bondholders Outstanding, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity, as the case may be, such entity (A) is a solvent entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the

State, (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Security Documents to which the Lessee shall be a party, and (1) in the Opinion of Counsel, (x) such entity shall be bound by all of the terms applicable to the Lessee of this Agreement and all other Security Documents to which the predecessor Lessee shall have been a party, and (y) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, and (2) in the Opinion of Nationally Recognized Bond Counsel, such merger, consolidation, sale or transfer will not cause the interest on the Bonds to become includable in gross income for Federal income tax purposes, and (C) has a net worth (as determined in accordance with GAAP) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer or otherwise acceptable to a majority in interest of the Bondholders Outstanding. The Lessee further represents, covenants and agrees that it is and through the term of the Lease Agreement will (y) continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Lease Agreement shall be duly qualified to do business in the State, and (z) shall deliver to the Agency the Required Disclosure Statement, in form and substance satisfactory to the Agency as set forth in Appendix D hereto, provided that if any modification to such Required Disclosure statement is not acceptable to the Agency acting in its sole discretion, then the Company shall be in default under this Agreement. Notwithstanding any of the foregoing, with the prior written consent of the Initial Bondholder, the principals of the Lessee shall be permitted to transfer their interests in the Lessee to immediate family members in connection with estate planning purposes so long as that immediately following such transfer Josip G. Grgas and Richard C. Veltri retain a majority of equity interest of the Lessee and operational control of the Lessee.

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 and supervision, the Bondholder, the Trustee, the Bond Registrar and the Paying Agents (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of any every kind and nature and howsoever caused (except with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing from May 13, 2008, the date the Agency adopted its Inducement Resolution for the Project, and continuing throughout the term of this Lease Agreement (subject to Section 6.2(e) hereof), and arising from, upon, about or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

- (i) the financing and/or refinancing of the costs of the Facility or Project and the marketing, issuance, sale and remarketing of the Bonds for such purpose;
- (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, furnishing, installation or completion of the Project or the Facility or any part thereof or the effecting of any work done in or about or in connection with the Facility, or

any part thereof, or any defects (whether latent or patent) in or in connection with the Facility or any part thereof;

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

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

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

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirements, including, but not limited to, failure to comply with the requirements of the City's Zoning Resolution and related regulations;

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

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

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

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

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to Lessee or its affiliates for, any Claims or Liability, arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof, including any Claims or Liability arising from or incurred as a result of the gross negligence or willful misconduct of such Indemnified Party, or at the direction of the Lessee or any other obligor under any of the Security Documents with

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

(c) (i) In addition to and without being limited by any other representation, warranties and covenants made by the Lessee under this Lease 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, except as set forth in a certain Phase I Environmental Site Assessment and Report for the Facility, dated April 17, 2008, prepared by General Consolidated Industries, Inc. Environmental & Engineering Consultants, as certified to the Agency on April 24, 2008 (the "Phase I") true and correct copies of which the Lessee has delivered to the Agency, to the best of the Lessee's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirement.

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

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

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

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

(vi) The parties hereto agree that the reference in this Section 6.2(c) to the Phase I is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee's obligations to carry out and perform all of the covenants stated throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to

indemnify each Indemnified Party and comply with all applicable Legal Requirements pertaining to Hazardous Materials.

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

(e) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision. For the purposes of this Section 6.2, the Lessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency’s control or supervision.

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

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

Section 6.3 **Compensation and Expenses of Trustee, Bondholder, Bond Registrar, Paying Agents and Agency.** The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual fees, charges and expenses and other amounts: 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, 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 and expenses of its counsel, the reasonable fees and charges of the Trustee for extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including reasonable counsel fees and expenses, and the reasonable fees, costs and expenses of the Bond Registrar, the fees, costs and expenses

(including legal, accounting and other administrative expenses) of the Bondholder, and the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency. The Lessee shall further pay (i) the reasonable fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's Bond Counsel and General Counsel in performing services for the Agency in connection with this Lease Agreement or the Indenture or any other Security Document and (ii) the reasonable fees, costs and expenses of the Bondholder, together with any reasonable fees and disbursements incurred by Bondholder's counsel in performing Bondholder's obligations in connection with this Lease Agreement or the Indenture or any other Security Document.

On the date of the sale and delivery by the Agency of the Bonds, the Lessee shall pay to the Agency, and the Agency acknowledges receipt of, an initial financing fee in the amount of \$31,922.20, of which \$2,500.00 of such fee has been received by the Agency prior to the date hereof as an application fee. The Lessee further agrees to pay, as an annual administrative servicing fee to the Agency, the amount of \$850.00 (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 the date of issuance of the Bonds and the anniversary of the date of closing 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 Title to Facilities; Grant of Easements; Release of Certain Land.** Neither the Lessee nor the Agency shall sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Lease Agreement, except as set forth in Sections 4.2 and 7.3 hereof, without the prior written consent of the other party and each of the Trustee and the Bondholder and any purported disposition without such consent shall be void.

The Lessee may, however, so long as there exists no Event of Default hereunder, request in writing to the Trustee and the Bondholder of the right to 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 Lease Agreement and the Company Lease and the lien of the Agency Mortgage, as shall be necessary or convenient for the operation or use of such Facility, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of such 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 Redemption Account of the Bond Fund. If the Trustee, the Agency and the Bondholder shall consent (in its sole discretion), the Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver and to cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Lease Agreement and the Company Lease and the lien of the Agency Mortgage.

Notwithstanding any other provision of this Lease Agreement, so long as there exists no Event of Default hereunder, the Lessee may from time to time request in writing to the Trustee,

the Agency and the Bondholder the release of and removal from this Lease Agreement and the Company Lease and the leasehold estate created hereby and thereby and the release from the lien of the Agency Mortgage of any unimproved part of the Facility Realty of a Facility (on which none of the improvements, including the buildings, structures, improvements, related facilities, major appurtenances, fixtures or other property comprising such Facility are situated) provided that such release and removal will not adversely affect the use or operation of such Facility or violate the required loan-to-value ratio. Upon any such request by the Lessee, if the Trustee and the Bondholder shall so consent (in its sole discretion), the Agency and the Trustee 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 of such Facility, subject to the following: (a) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Lease Agreement; (b) any liens, easements and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented; (c) any liens and encumbrances or reservations resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Lease Agreement; (d) Permitted Encumbrances (other than the lien of this Lease Agreement, the Company Lease, the Indenture and the Agency Mortgage); and (e) any liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless there shall be deposited with the Trustee the following:

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

(2) An amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greatest of (A) the original cost of such portion of the Facility Realty of such Facility 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.

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 Lease Agreement.

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

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

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

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

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

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

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

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

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

(j) Not later than one hundred twenty (120) days following a Determination of Taxability, the Lessee shall pay or cause to be paid to the Trustee an amount sufficient, when added to the amount then in the Bond Fund and available for such purpose, to retire and redeem all Bonds then Outstanding, in accordance with Section 2.03(f) of the Indenture.

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

Section 6.6 **Financial Statements; No-Default Certificates; Financial Covenants.**

(a) The Lessee agrees to deliver to the Trustee and the Initial Bondholder (and to the Agency but only upon written request by the Agency therefor) (i) within 120 days of the close of each fiscal year of the Company, the audited balance sheet, statements of income and retained earnings and cash flows of the Company as of the last day of and for such fiscal year, each such statement to be prepared in accordance with GAAP consistently applied and with an unqualified opinion by a firm of independent certified public accountants reasonably satisfactory to the Trustee and Initial Bondholder accompanied by an accounts receivables aging report as of the close of such fiscal year; (ii) within 45 days of the close of each fiscal quarter of the Company, the internally prepared balance sheet, statements of income and retained earnings and cash flows for the Company as of the last day of and for such quarterly fiscal period, each such statement to be certified as true, complete and accurate by the chief financial or accounting officer of the Company, in each case as having been prepared in accordance with GAAP consistently applied; (iii) within 30 days after filing of the same, the respective completed and signed income tax returns of the individual Guarantors, including all schedules thereto. In the event such returns are on extension, a copy of such executed extension shall be furnished to the Trustee and the Initial Bondholder with all materials filed therewith; (iv) within 120 days after the close of its fiscal year, the respective completed and signed income tax returns of Lessee, including all schedules thereto. In the event such returns are on extension, a copy of such executed extension shall be furnished to the Trustee and the Initial Bondholder with all materials filed therewith; (v) within 120 days of the close of each calendar year, the updated and personal financial statement of each individual Guarantor on the Initial Bondholder's standard form; and (vi) such other statements and reports as shall be reasonably requested by the Trustee, the Initial Bondholder and the Agency.

(b) The Lessee shall deliver to the Trustee and the Bondholder with each delivery of annual financial statements required by Section 6.6(a) hereof, and to the Agency but only upon request therefor by the Agency, 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 Lease Agreement and in any other Security Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, and a certificate of an Authorized Representative of the Lessee that the insurance it maintains complies

with the provisions of Section 4.5 of this Lease 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 or the Trustee, the Lessee will execute, acknowledge and deliver to the Agency, the Trustee and the Bondholder a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

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

Section 6.7 **Discharge of Liens.** (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts payable under this Lease Agreement or the interest of the Lessee under this Lease Agreement or the Company Lease other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b), the Lessee within 30 days of 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 Bondholder and the Trustee and within sixty (60) days of receipt of such notice shall 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 Lease 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, the Bondholder and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in the Company Lease or the Lease Agreement, of the Agency, the Lessee or the Trustee or against any of the rentals or other amounts payable under this Lease Agreement, (2) neither the Facility nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Agency nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in

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

Section 6.8 **Agency's Authority; Covenant of Quiet Enjoyment.** The Agency covenants and agrees that it has full right and lawful authority to enter into this Lease Agreement for the full term hereof, including the right to grant the options to terminate this Lease Agreement herein contained, and that, subject to the terms and provisions of the Agency Mortgage, the Indenture and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Lease Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility by the Lessee, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.9 **No Warranty of Condition or Suitability.** THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR THEIR PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

Section 6.11 **Issuance of Additional Bonds.** The Agency and the Lessee recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Holders of one hundred percent (100%) in aggregate principal amount of the Bonds Outstanding, to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2008 Bonds for the purpose of completing the Project, providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, providing extensions, additions or improvements to the Facility, or 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 Lease Agreement and the Lessee providing, among other things, for the payment by the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith.

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

Section 6.12 **Employment Information, Opportunities and Guidelines.** (a) Annually, by August 1 of each year, commencing August 1, 2008, until the termination of this Lease 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 Appendix A hereto, certified as to accuracy by the chief financial or accounting officer of the Lessee.

(b) The Lessee shall ensure that all employees of and applicants for employment with 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 federal Job Training Partnership Act (P.L. No. 97-300) in which any part of 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 Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(c) The Lessee hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor ("DOL"), to release to the Agency and/or the New York City Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and its respective

employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements, applicable laws, rules or regulations and to determine compliance of the Project with this Section. In addition, upon the Agency's request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by New York City Local Law 44 of 2005 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee or 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 44 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 Lease Agreement.

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

Section 6.13 Redemption Under Certain Circumstances; Special Covenants. (a) Upon the determination by resolution of the members of the Agency that (x) the Lessee is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee within thirty (30) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency or the Bondholder to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (y) the Lessee or the Sublessee or any Affiliate of the Lessee or the Sublessee or any Principal of the Lessee or the Sublessee or of any such Affiliate has committed a material violation of a material Legal Requirement and the failure of the Lessee within sixty (60) days (or such longer period as may be established pursuant to the proviso of this sentence) of the receipt by the Lessee of written notice of such determination from the Agency to cure such material violation (which cure, in the case of a Principal who shall have committed a material violation of a material legal Requirement, may be effected by the permanent removal of such Principal) or (z) any Conduct Representation is false, misleading or incorrect in any material respect as of the date made, together in each case with a copy of such resolution (a copy of which notice shall be sent to the Trustee), the Lessee covenants and agrees that, in any of the circumstances described in clauses (x), (y) or (z) of this Section 6.13, it shall, on the immediately succeeding Interest Payment Date following the termination of such thirty (30) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the applicable Redemption Price (including the prepayment premiums provided in Section 2.03(a) of the Indenture) of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that if such non-compliance or cure of a material violation of a material Legal Requirement cannot be cured within such period of thirty (30) days with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance or material violation and

thereafter prosecutes the curing thereof with diligence and to the Agency's and the Bondholder's reasonable satisfaction, such period of time within which the Lessee may cure such failure or material violation shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency and the Bondholder shall notify the Trustee in writing of any such extension. The Agency shall give prior written notice of the meeting at which the members of the Agency are to consider such resolution to the Lessee, the Bondholder and the Trustee, which notice shall be no less than sixty (60) days prior to such meeting.

(b) In the event the Lessee fails to obtain or maintain the public liability insurance with respect to the Facility required under Section 4.5 hereof, and the Lessee shall fail to cure such noncompliance within 10 days of the receipt by the Lessee of written notice of such noncompliance from the Agency and a demand by the Agency on the Lessee to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Lessee shall pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem all Bonds then Outstanding at the Redemption Price of one hundred percent(100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

(c) Upon the circumstances set forth in Sections 2.03(d), (e), (f) and (g) 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. The Lessee shall, prior to directing the redemption of any Bonds in accordance with this Section 6.13(c), consult with Nationally Recognized Bond Counsel for advice as to a manner of selection of Bonds for redemption that will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

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

Section 6.14 **Further Assurances.** The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, the Agency, the Trustee or the Bondholder deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Lease Agreement and any rights of the Agency hereunder, under the Indenture or under the Agency Mortgage. The Lessee shall within ten (10) Business Days after notice of such filing, recording or other act cause there to be furnished to the Agency, the Bondholder and the Trustee an opinion of counsel as to the adequacy and reciting the details of such filing, recording or other act to be effected in the future with respect to the Lease Agreement, the Indenture, any Security Document or financing statement.

Section 6.15 **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 Lessee) 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 Lessee 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 Lessee) 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 Lessee. The Lessee agrees to furnish the Agency and the Trustee with the Opinion of Counsel addressed to the Agency and the Trustee referred to in Section 7.08 of the Indenture and shall perform all other acts (including the payment of all costs) necessary in order to enable the Agency and the Trustee to comply with this Sections 6.14 and 6.15 hereof, Section 12 of the Agency Mortgage and Section 7.08 of the Indenture.

The Agency and the Lessee acknowledge that, as of the date of issuance of the Series 2008 Bonds,

(i) 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.

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

Section 6.17 **Current Facility Equipment Description.** The Lessee covenants and agrees that throughout the term of this Lease Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of Exhibit C to this Lease Agreement to be an accurate and complete description of all current items of Facility Equipment. To this end, the Lessee covenants and agrees (i) that no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of Facility Equipment, (ii) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (iii) that no item of Facility Equipment shall be delivered and installed at the Facility as part of such Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in Exhibit C attached as part of this Lease Agreement, and the Lessee shall from time to time prepare and deliver to the Agency and the Trustee supplements to such Exhibit C in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties and, at the Agency's or the Lessee's request, duly recorded by the Lessee, and, at the Agency's request, additional financing statements with respect thereto shall be duly filed by the Lessee.

Section 6.18 **Contact Information Form.** The Lessee shall file with the Agency by July 31 of each year commencing July 31, 2008, the Location and Contact Information Form set forth in Appendix E hereto.

Section 6.19 **Compliance with Section 7.11 of the Indenture.** The Lessee shall comply with the provisions of Section 7.11 of the Indenture.

Section 6.20 **Signage at the Facility.** Promptly after the Commencement Date, the Lessee shall erect at the Facility, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign (the "Sign") with the following information upon it:

FINANCIAL ASSISTANCE PROVIDED THROUGH THE

**NEW YORK CITY
INDUSTRIAL DEVELOPMENT AGENCY**

Mayor Michael Bloomberg

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Agency in writing or electronically; and (ii) the minimum size of the sign shall be four feet by eight feet; and (iii) the Sign shall have no other imprint upon it other than that of the Agency. The Sign shall remain in place at the Facility until completion of the Project. The Lessee may erect any other sign at the Facility in accordance with the Legal Requirements.

Section 6.21 **Special Covenants of the Company.** (a) **Debt Service Coverage Ratio.** Commencing as of the end of the first fiscal quarter following the Closing Date, the Company shall maintain at all times a Debt Service Coverage Ratio of at least 1.25:1, tested as of the end of each Fiscal Year based the Company's audited financial statements. "Debt Service Coverage

Ratio” shall mean the ratio, as of any date of calculation, for the immediately preceding twelve month period, calculated by dividing (i) the sum of net profits (excluding unrealized investment gains/losses), plus interest expense and depreciation by (ii) the sum of current maturities of long term debt plus interest.

(b) **Tangible Net Worth.** The Company shall maintain at all times a “tangible net worth” of no less than \$3,000,000. “Tangible net worth” shall mean net worth reduced by intangible assets, plus any debt subordinate to the Initial Bondholder.

(c) **No Material Change.** No material change in the business operating activities, ownership or management of the Project or the Facility which is inconsistent with its purpose shall be permitted without the prior written consent of the Initial Bondholder.

(d) **Security Interest.** The Company shall not grant any security interest in or otherwise pledge any of the assets relating to the Project, including cash or investments designated by the Trustee of the Company, without the consent of the Initial Bondholder.

(e) **Banking.** The Company shall maintain a substantial banking account relationship with the Initial Bondholder so long as the Initial Bondholder holds the Series 2008 Bonds.

(f) **Licenses.** The Company shall maintain all required licenses to operate the Facility.

(g) **Incurrence of Debt; Guaranties.** The Company shall not incur any indebtedness in excess of \$50,000 or guaranty any debt without the consent of the Initial Bondholder.

(h) **Environmental Covenants.** The Lessee hereby covenants and agrees with the Agency that if any renovation or construction disturbs any material which may be suspected asbestos containing material, the Lessee shall, at its sole cost and expense, prior to commencement of such renovation and/or construction, survey, test and remove all asbestos-containing materials, if any, from the Facility and undertake any remediation related to the removal of such materials, so as to comply with New York State Department of Environmental Conservation (“NYSDEC”), New York City Department of Environmental Protection (“NYCDEP”) rules and regulations, New York City Local Laws 70 and 76 of 1985 and all other applicable federal, state and local laws, ordinances, rules and regulations appertaining thereto. The Lessee further covenants and agrees that if asbestos is present and may be disturbed in the course of the renovation and/or construction that the Lessee shall prepare, develop and implement an asbestos operations and maintenance plan and perform such further removal and remediation as may be required by all other Legal Requirements. The Lessee shall provide to the Agency evidence acceptable to the Agency of such testing, removal and remediation, if any, conforming to applicable NYSDEC and NYCDEP rules and regulations and all other applicable Legal Requirements, and that any long term management plan has been implemented, within one (1) year from the Commencement Date.

Section 6.22 **Architect’s Certificate and Construction Manager’s Certificate.** No later than August 15, 2008, the Lessee shall deliver to the Agency an executed Architect’s Certificate and, no later than September 15, 2008, the Lessee shall deliver to the Agency an executed Construction Manager’s Certificate, in the forms attached hereto as, respectively,

Appendix G and Appendix H. The Lessee covenants and agrees that it shall not undertake any renovations or improvements to the Facility until it has delivered to the Agency an executed Architect's Certificate and an executed Construction Manager Certificate.

Section 6.23 **Lessee Undertaking**. The Lessee shall comply with the terms of the Undertaking, dated July 1, 2008 and attached hereto as Appendix K.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

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

(a) Failure of the Lessee to pay any rental that has become due and payable by the terms of Section 3.3 hereof which results in a default in the due and punctual payment of the principal of, redemption premium, if any, or interest on any Bond; provided, however, notwithstanding anything herein to the contrary, if any rental is paid after the applicable Interest Payment Date or Payment Date, such interest shall include a late fee in an amount which is five percent (5%) more than the then current interest rate if such rental payment is not paid within 10 days of the Interest Payment Date;

(b) Failure of the Lessee to pay any amount (except as set forth Section 7.1(a) hereof) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.4 or 4.5 hereof and continuance of such failure for a period of ten (10) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a) or (b) hereof) and continuance of such failure for a period of twenty (20) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(d) The Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property; (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due; (iii) make a general assignment for the benefit of its creditors; (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect); (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (vi) take any action for the purpose of effecting any of the foregoing; (vii) be adjudicated a bankrupt or insolvent by any court or (viii) fail to lift within thirty (30) days of entry thereof, any execution, garnishment or attachment of any of its assets;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization,

dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee shall be entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made by or on behalf of the Lessee, or any Guarantor in the application, Commitment Letter and related materials submitted to the Agency or the initial purchaser(s) of the Series 2008 Bonds for approval of the Project or its financing, or by or on behalf of the Lessee or any Guarantor herein or in any of the other Security Documents or in the Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee and the original purchaser(s) of the Series 2008 Bonds, or in the Tax Certificate, or 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) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing;

(h) In the event Lessee or their respective affiliates shall become in default, beyond applicable grace periods, under the terms of any other loan or arrangement with Initial Bondholder or its affiliates;

(i) If without the consent of Initial Bondholder there shall occur the dissolution or change in composition of a partnership Guarantor, dissolution, merger or consolidation of a corporate Guarantor, or termination or dissolution of a trust Guarantor; or

(j) Without the consent of the Initial Bondholder there shall occur the voluntary or involuntary dissolution, merger, consolidation, winding up or reorganization of Lessee or the occurrence of any action preparatory thereto.

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

(a) The Trustee, as and to the extent provided in Article VIII of the Indenture, may, with the consent of the Bondholder, and shall at the specific written direction of the Bondholder, cause all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Lease 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 Lease Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Agency, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

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

(c) The Agency, with the prior written consent of the Trustee and the Bondholder, or the Trustee, with the consent of the Bondholder, may terminate this Lease Agreement and exclude the Lessee from possession of the Facility, in which case this Lease 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 Lease Agreement shall relieve the Lessee of its liability and obligations hereunder or thereunder and such liability and obligations shall survive any such termination;

(d) The Agency or the Trustee, with the consent of the Bondholder, 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 Lease Agreement;

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

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

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

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

Section 7.3 **Reletting of Facilities.** 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 Bondholders, but the Agency shall not unreasonably refuse to accept or receive

any suitable occupant or tenant offered by the Lessee; provided that such reletting shall not adversely affect the tax-exempt status of the Bonds. The Agency and the Trustee shall not otherwise be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Lessee, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Lessee, after paying the expenses of reletting and collection, then the Lessee hereby agrees to pay and satisfy any such deficiency if, as and when the same exists; provided, however, any excess rentals from any such reletting shall be credited to any rental due or to become due by the Lessee.

Section 7.4 **Remedies Cumulative.** The rights and remedies of the Agency or the Trustee under this Lease Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee allowed by law with respect to any default under this Lease Agreement. Failure by the Agency, the Trustee or the Bondholder 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 Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Bondholder and/or the Trustee and the Lessee or any delay or omission on the part of the Agency and/or the Bondholder 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 Trustee or the Bondholder, 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 Lease Agreement or otherwise.

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

Section 7.7 **Agreement to Pay Attorneys' Fees and Expenses.** In the event the Lessee should default under any of the provisions of this Lease Agreement, and the Agency, the

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

ARTICLE VIII OPTIONS

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

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

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

- (1) an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to redeem, purchase or defease the Outstanding Bonds in accordance with the provisions of the Indenture, including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Outstanding Bonds;
- (2) expenses of redemption, the fees and expenses of the Agency and the Trustee and all other amounts due and payable under this Lease Agreement or the Indenture on or before such date; and
- (3) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate.

If no Bonds remain Outstanding, the Lessee shall pay advance rental payments to the Agency, in consideration thereof, in legal tender, in an amount equal to any and all payments due hereunder, including but no limited to any amounts due under Sections 4.3, 6.2, 8.5 and 9.17 hereof, and under the other Security Documents.

(d) Upon such payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption) in accordance with Section 8.1(c) hereof, the Lessee may terminate this Lease Agreement by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee no more than thirty (30) days after the payment in full of the Bonds of the exercise of such option to terminate this Lease Agreement which notice shall set forth a requested closing date for the termination of this Lease Agreement which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date the fees and expenses of the Agency and the Trustee and all other amounts due and payable under this Lease 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.

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

Section 8.2 **Termination on Exercise of Option to Terminate.** Upon termination of this Lease Agreement in accordance with Section 8.1 hereof, the Agency will, upon payment of the consideration payable in accordance with Section 8.1(c) hereof deliver or cause to be delivered to the Lessee a termination of this Lease Agreement in recordable form. Concurrently with the delivery of such termination 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.

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 Lease 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 or Continuance of Agreement.

(a) After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5 and 9.17 hereof. Notwithstanding any other provision of this Agreement to the contrary, upon the later of (i) the full payment of the Bonds or provision for the full payment in full thereof having been made in accordance with Section 10.01 of the Indenture or (ii) the Abatement Termination Date, and upon receipt of forty-five (45) days prior written notice of the Agency requesting termination, the Lessee or any successor thereto shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and any other Security Documents, together with any amounts due and payable under this Agreement and any other Security Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Certificate and thereupon the Lessee shall accept, leasehold title to the Facility received by the Agency under the Company Lease and such termination shall forthwith become effective subject, however, to the survival of the obligations of the Lessee under Section 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, and 9.17 hereof. In the event the Lessee does not accept such title to the Facility and terminate this Agreement within such forty-five (45) day period, then commencing on the forty-sixth (46th) day after transmittal of the notice requesting termination as above provided, the Lessee shall in addition to all other payment obligations due to the Agency hereunder make rental payments to the Agency in the amount of \$500.00 per day until the Lessee shall have accepted such title to the Facility and terminated this Agreement in accordance with the provisions hereof.

(b) Unless the Lessee has otherwise opted to terminate this Agreement pursuant to subsection (a) above, upon the full payment of the Bonds or provision for the full payment in full thereof having been made in accordance with Section 10.01 of the Indenture, this Agreement and the Company Lease shall remain in full force and effect, until the Termination Date, *provided, however*, (i) all references to the "Initial Bondholder", the "Bondholder", the "Commitment Letter", the "Bonds", the "Bond Fund", the "Rebate Fund", the "Renewal Fund", the "Agency Mortgage", the "Determination of Taxability", the "Trustee" and the "Indenture" shall be of no further force and effect, except references to such terms in Section 6.2 hereof which shall remain

in full force and effect; and (ii) all references to approvals or consents required by the Trustee or the Bondholder, shall be deemed to require the approval or consent of the Agency.

Section 8.5 **Recapture of Public 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 during the Recapture Period (as those terms are defined below), but such Recapture Event is prior to the Operations Commencement Date (defined below), the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts upon demand by the Agency: (i) all Benefits (as defined below); and (interest described in subsection (b)(iii) and (if applicable) (iv) immediately below.

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

(i) If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.

(ii) 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).

(iii) The principal of the Benefits to be recaptured, whether pursuant to “(i)” or “(ii)” preceding, shall bear interest equal to the effective rate resulting from the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Lessee, through and including the date of the Agency’s demand; such that (x) Benefit principal comprising mortgage recording taxes shall be deemed to have accrued to the Lessee on the Closing Date, and (y) Benefit principal comprising real estate tax benefits shall be deemed to have accrued to the Lessee on each date upon which the Lessee shall make a payment under Section 4.3(g) hereof, and (z) Benefit principal comprising sales and/or use tax 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 Closing Date.

(iv) In addition to the interest payable pursuant to “(iii)” preceding, the principal of the Benefits to be recaptured, whether pursuant to “(i)” or “(ii)” 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.

(v) For purposes of subsection (a) and subsection (b) 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 (b)(iii) 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 (b)(iv) 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 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 Period” shall mean the period of time commencing on the Closing Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

The term “Recapture Event” shall mean any one of the following events:

1. The Lessee shall have failed to complete the Project by the Project completion date set forth in Section 2.2 hereof.
2. Lessee shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.
3. The Lessee shall have transferred all or substantially all of its employees to a location outside of the City.

4. The Lessee shall have substantially changed the scope and nature of its operations at the Facility Realty.
5. The Lessee shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.
6. The Lessee shall have subleased all or part of the Facility Realty in violation of Section 9.3 hereof.
7. The Lessee 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 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 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 at the Facility Realty prior to relocation; and (iii) the Lessee 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 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.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

1. 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 or any Affiliate, or
2. 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 were the Agency to recapture any Benefits.

(c) 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.

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

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 Lease Agreement, then except as otherwise expressly provided in this Lease 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 the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

Section 9.3 **Assignment or Sublease.** The Lessee may not at any time assign or transfer this Agreement (other than as provided for herein), or sublet the whole or any part of the Facility without the prior written consent of the Agency, the Initial Bondholder and the Trustee; provided further, that if the Agency, the Initial Bondholder and the Trustee consent to any such assignment, transfer or subletting, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and

conditions of this Agreement and of any other Security Document to which it shall be a party, (2) any assignee or transferee of the Lessee in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee or transferee shall utilize the Facility as a qualified "project" and as a manufacturing facility within the meaning of the Act, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document, (6) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty percent (20%) of such space would be subleased by the Lessee (excluding Affiliates of the Lessee), (7) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, (8) each such assignment, transfer or sublease contains such other provisions as the Agency, the Initial Bondholder or the Trustee may reasonably require, (9) in the opinion of Nationally Recognized Bond Counsel, such assignment, transfer or sublease shall not cause the interest on the Bonds to be includable in gross income for Federal income tax purposes, and (10) any such assignee, transferee or sublessee shall deliver to the Agency the Required Disclosure Statement in form and substance satisfactory to the Agency, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Agency acting in its sole discretion, then the Lessee shall be in default under this Agreement. The Lessee shall furnish or cause to be furnished to the Agency, the Initial Bondholder and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least twenty (20) days prior to the date of execution thereof.

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

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

the under-tenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee..

The Lessee further agrees to furnish the Agency, in substantially the form provided in Appendix 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.

Section 9.4 **Priority of Agency Mortgage.** Pursuant to the Agency Mortgage, the Agency and the Lessee will grant mortgage liens on and security interests in their respective title and leasehold interests in the Facility to the Trustee, and pursuant to the Indenture, the Agency will pledge and assign the rentals and certain other moneys receivable under this Lease Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of, and interest on the Bonds, and this Lease Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture, and such mortgage liens, security interests, pledges and assignments thereunder.

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

Section 9.6 **Amendments.** This Lease Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only if the Lessee shall assume in writing the obligations of such amended Lease 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 General Counsel, New York City Industrial Development Agency, 110 William Street, 4th Floor, New York, New York with a copy to the Executive Director of the Agency at the same address; if to the Lessee, to 52-16 34th Street, Long Island City, New York 11101, Attention: Josip G. Grgas, with a copy to Ronald L. Nurnberg, Esq. at Kane Kessler, P.C., 1350 Avenue of the Americas, 26th Floor, New York, NY 10019; if to the Trustee, to U.S. Bank, National Association, 100 Wall Street, Suite 1600, New York, NY 10005, Attention: William G. Keenan; with a copy to Dorsey & Whitney LLP, 250 Park Avenue, New York 10177, Attention: David J. Fernandez, Esq.; and if to the Bondholder, to Sovereign Bank, 24-29 Jackson Avenue, Long Island City, NY 11101, Attention Steven Levi; with a copy to Rivkin Radler, LLP, 926 RexCorp Plaza, Uniondale, NY 11556, Attention Harvey S. Epstein, Esq. The Agency, the Lessee and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

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

Section 9.9 **Severability.** If any clause, provision or section of this Lease 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 Facilities.** The Lessee will permit the Trustee, or its duly authorized agents, at all reasonable times upon reasonable written notice to enter upon the Facility Realty and to examine and inspect the Facility and exercise their rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Lessee will further permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice to enter upon the Facility but solely for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as a qualified “project”, and as a manufacturing facility, under the Act consistent with the purposes set forth in the recitals to this Lease 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 Lease 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 Lease 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 Lease Agreement be a “net lease” and that all of the rent be available for debt service on the Bonds, and this Lease Agreement shall be construed to effect such intent.

Section 9.14 **Law Governing.** This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State without regard or reference to its conflicts of laws principles.

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

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

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

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

The provision of this Lease 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 Lease Agreement.

Section 9.18 **Non-Discrimination.** (a) At all times during the construction, maintenance and operation of the Facility, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

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


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

Section 9.19 **No Recourse under This Lease Agreement or on Bonds.** All covenants, stipulations, promises, agreements and obligations of the Agency or Lessee, as applicable, contained in this Lease Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency or Lessee, as applicable, and not of any member, director, officer, employee or agent of the Agency or Lessee, as applicable, 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 Lessee, as applicable, or any natural person executing the Bonds.

Section 9.20 **Date of Lease Agreement for Reference Purposes Only.** The date of this Lease Agreement shall be for reference purposes only and shall not be construed to imply that this Lease Agreement was executed on the date first above written. This Lease Agreement was executed and delivered on the date of original issuance and delivery of the Series 2008 Bonds.

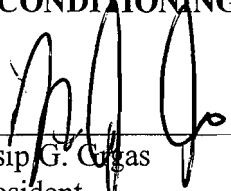
IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs, and the Lessee has caused its name to be subscribed hereto by its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

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

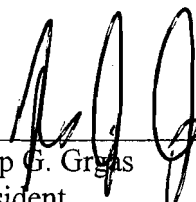
Maureen P. Babis
Executive Director

UNITED AIRCONDITIONING CORP. II

By: 

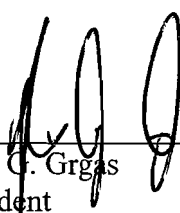
Josip G. Grgas
President

UNITED SHEET METAL CORP.

By: 

Josip G. Grgas
President

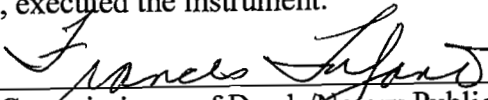
UAC SERVICE CORP.

By: 

Josip G. Grgas
President

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

On the 30 day of June, 2008, before me, the undersigned, personally appeared Maureen P. Babis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

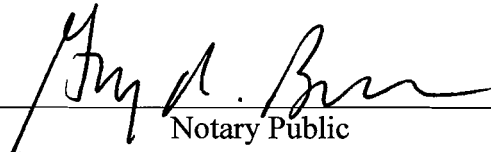


Commissioner of Deeds/Notary Public

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

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

On the 1st day of July, 2008, before me the undersigned, personally appeared Josip G. Grgas, 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.

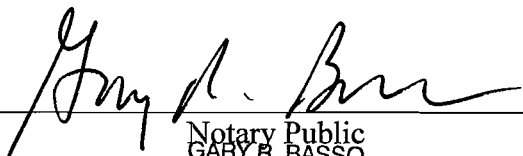


Notary Public

GARY R. BASSO
Notary Public, State of New York
No. 4880911 *Pulman*
Qualified in ~~Westchester~~ *Pulman* County
Commission Expires Dec. 29, 20 10

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

On the 1st day of July, 2008, before me the undersigned, personally appeared Josip G. Grgas, 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.

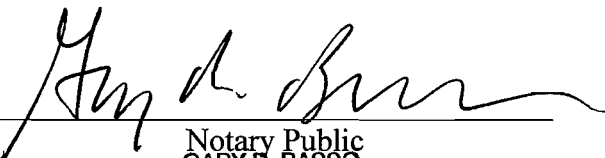


Notary Public

GARY R. BASSO
Notary Public, State of New York
No. 4880911 *Pulman*
Qualified in ~~Westchester~~ *Pulman* County
Commission Expires Dec. 29, 20 10

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

On the 1st day of July, 2008, before me the undersigned, personally appeared Josip G. Grgas, 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

GARY R. BASSO
Notary Public, State of New York
No. 4880911 *Pulman*
Qualified in ~~Westchester~~ *Pulman* County
Commission Expires Dec. 29, 20 10

EXHIBIT A

DESCRIPTION OF THE PROJECT

Acquisition, renovation and equipping of an approximately 27,600 square foot manufacturing facility on a 27,792 square foot parcel of land located at 27-02 Skillman Avenue, in Long Island City, New York (the "Facility"), to be used by the Company in connection with the manufacturing of heating, ventilation, air conditioning and mechanical systems for commercial buildings.

EXHIBIT B

DESCRIPTION OF FACILITY REALTY

See Attached Description

SCHEDULE A (Description)

TITLE NO. AA08-Q-9887
(NY2144-3007)

Policy Number: 2730632-11742

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

BEGINNING at the corner formed by the intersection of the southerly side of Skillman Avenue (60 feet wide) with the easterly side of 27th Street (60 feet wide);

RUNNING THENCE easterly along the southerly side of Skillman Avenue, 244.52 feet to the corner formed by the intersection of the southerly side of Skillman Avenue with the westerly side of 28th (60 feet wide);

RUNNING THENCE southerly along the westerly side of 28th Street, 193.14 feet;

THENCE westerly at right angles with the westerly side of 28th Street, 98.04 feet;

THENCE northerly at right angles with the last mentioned course, 31.68 feet;

THENCE westerly at right angles with the last mentioned course, 110.40 feet to the easterly side of 27th Street; and

RUNNING THENCE northerly along the easterly side of 27th Street, 33.62 feet to the point or place of BEGINNING.

EXHIBIT C

DESCRIPTION OF FACILITY EQUIPMENT

None

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

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than **August 1, 20__**. PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.

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

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

1. Number of permanent Full-Time Employees (including Subtenant's employees) as of July 1, 20__.....

2. Number of non-permanent Full-Time Employees (including Subtenant's employees) as of July 1, 20__.....

3. Number of permanent Part-Time Employees (including Subtenant's employees) as of July 1, 20__.....

4. Number of non-permanent Part-Time Employees (including Subtenant's employees) as of July 1, 20__.....

5a. Number of "non-Construction" Contract Employees as of July 30, 20__.....

5b. Average number of Construction Employees during Fiscal Year ending June 30, 20__

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

(Excluding Subtenants)

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

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

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

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

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

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

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

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

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

For Items 14 through 15, indicate the value of the benefits realized at Project Locations during FY'

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

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

16a. Were physical improvements made to any Project Location during FY __ at a cost exceeding 10%
of the current assessed value of the existing improvements at such Project Location?..... Yes No

16b. 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/Subtenant, 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.

Project Name: _____ Fed Tax
ID: _____

Signature By: _____
Date _____

Name _____ Title: _____ (print):

DEFINITIONS & INSTRUCTIONS

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

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

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

"Construction Employee" is a person who is an independent contractor or subcontractor, or an employee thereof, who provides construction services to the Company, an Affiliate or a Subtenant at a Project Location.

"Contract Employee" is a person, other than a Construction Employee, who is an independent contractor or subcontractor, or an employee thereof who provides services to the Company, an Affiliate or a Subtenant at a Project Location

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

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

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

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

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

"Subtenant" 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) Subtenants at all Project Locations covered by the Project Agreement

Each Subtenant 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 Subtenants. The Company must retain for six (6) years all forms completed by its Affiliates and Subtenants and at NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Subtenant.

- 1- 4. Items 1, 2, 3 and 4 must be determined as of June 30, 20__ and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including those employed by the Company or its Affiliates and by Subtenants at the Project Locations. **Do not include Contract or Construction Employees in Items 1, 2, 3 and 4.**
5. (a) Report all Contract Employees providing services to the Company and its Affiliates and Subtenants at all Project Locations. Do not include Construction Employees in question 5a. (b) Report the 12 month average of Construction Employees providing services to the Company and its Affiliates and Subtenants at all Project Locations for the previous fiscal year. Use the number of construction employees on the last payroll date of each month to compute this average.
- 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 Subtenants. 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 CEP benefits received by the Company and its Affiliates and any Subtenants 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 Subtenants 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>.

■ ■ ■ ■ ■

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 UNITED AIRCONDITIONING CORP. II, UNITED SHEET METAL CORP. and UAC SERVICE CORP., each a corporation duly organized and existing under the laws of the State of New York (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 July 1, 2008 (the "Lease Agreement"), between the New York City Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFY 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;

\$ _____ represent 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, but in no event no later than _____), (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 have hereunto set their hand this ____ day of _____, ____.

UNITED AIRCONDITIONING CORP. II

By: _____
Josip G. Grgas
President

UNITED SHEET METAL CORP.

By: _____
Josip G. Grgas
President

UAC SERVICE CORP.

By: _____
Josip G. Grgas
President

SUBTENANT OCCUPANCY SURVEY

As of December 31, 20__

In order to comply with its Agreement, the Company is required to complete and return Exhibit A and this Survey to NYCIDA no later than February 1, _____.
PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF TERMS USED ON THIS PAGE. Please remember to complete a separate Subtenant Occupancy Survey for each project location on Exhibit A. In the event that a single project location is comprised of multiple blocks and lots, please note this on Exhibit A.

COMPANY: _____

PROJECT LOCATION: _____

Part 1. Do Persons other than the Company use, occupy, sublease and/or license space at the Project Location? Yes No

If the answer to Part 1 above is "No", please skip Part 2 and continue to Part 3 through 4.

Part 2. List Occupant(s) and provide details

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

(Please continue on a separate page if necessary)

Part 3. TOTAL SQUARE FOOTAGE AT THIS PROJECT LOCATION: _____ square feet

Part 4. I, the undersigned, hereby certify that the information reported above is true, correct and complete as of **December 31, 20__** and that the occupants listed above are the only

Occupants, subtenants and/or licensees at the Project Location. I understand that this information is submitted pursuant to the requirements of the Agreement.

Print Name: _____

Date: _____

Signature: _____

Phone Number: _____

Title: _____

Email: _____

Return documents via Fax to: Compliance Dept (212) 618-5738 or Mail to: NYCIDA Attention: Compliance Dept. 110 William Street, 3rd Flr, New York, NY 10038
For questions about the Subtenant Occupancy Survey please call Compliance Reporting Hotline at (212) 312-3963 or email ComplianceReporting@nycedc.com
Compliance Website: www.nycedc.com/ComplianceReporting

“Agency” is the New York City Industrial Development Agency.

“Agreement” is Installment Sale, Lease, Loan, and/or Project Agreements between the New York City Industrial Development Agency and the Company.

“Company” includes any entity that is a party to an Installment Sale, Lease, Loan, and/or Project Agreement.

“Date Occupancy Began” is the effective date in which Occupant uses space at the Project Location

“Date Occupancy Will End” is the effective date in which Occupant vacates space at the Project Location

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

“Principal” means, with respect to any entity: (A) an executive officer; (B) a general or managing partner; (C) another entity or an individual that owns or controls, whether directly or indirectly 10% or more of the equity or other controlling interest in such entity.

“Project Agreement” is the Agreement and/or the sublease (if any) on the Agency's form.

“Project Location” is any location at which Financial Assistance has been provided to the company pursuant to a Project Agreement.

“Occupant” is an individual or entity (excluding the Company) that uses and/or occupies space at any Project Location.

SPECIAL INSTRUCTIONS

Please provide Project Name and list all Project Locations on Exhibit A along with their corresponding addresses, boroughs, blocks and lots. In the event that a single project location is comprised of multiple blocks and lots, please note this on Exhibit A.

Please submit a separate survey for *each* Project Location listed on Exhibit A. After completion, please return Exhibit A and the survey(s) to NYCIDA.

Return documents via Fax to: Compliance Dept (212) 618-5738 or Mail to: NYCIDA Attention: Compliance Dept. 110 William Street, 3rd Flr, New York, NY 10038
For questions about the Subtenant Occupancy Survey please call Compliance Reporting Hotline at (212) 312-3963 or email ComplianceReporting@nycedc.com
Compliance Website: www.nycedc.com/ComplianceReporting

FORM OF REQUIRED DISCLOSURE STATEMENT

The undersigned, an authorized representative of _____, a _____ organized and existing under the laws of the State of _____, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to the New York City Industrial Development Agency (the "Agency") pursuant to [Section 6.1] [Section 9.3] of that certain Lease Agreement, dated as of July 1, 2008, between the Agency and United Airconditioning Corp. II, United Sheet Metal Corp. and UAC Service Corp. (the "Lease Agreement") THAT:

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

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

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

(ii) has been convicted of a misdemeanor and/or found in violation of any administrative, statutory, or regulatory provision in the past five (5) years;

(iii) has been convicted of a felony, and/or any crime related to truthfulness and/or business conduct in the past ten (10) years;

(iv) has any felony, misdemeanor and/or administrative charges currently pending;

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(vi) has owned at any time in the preceding three (3) years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

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

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

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

Person shall mean any entity, whether an individual, trustee, corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated

organization, business association, tribe, firm, joint venture, governmental authority, governmental instrumentality or otherwise.

Principal(s) shall mean, with respect to any Person, the most senior three officers of such Person, any Person with a ten percent (10%) or greater ownership interest in such Person and any Person as shall have the power to Control such Person.

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

[NAME OF CERTIFYING ENTITY]

By: _____
Name:
Title:

LOCATION & CONTACT INFORMATION

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

Eligible Project Location(s):

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

Project Address Floor Borough Zip Code Type of Benefit (Pilot, Sales Tax, etc.)

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

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

Project Name:

Name: _____ Title: _____

Address:

Phone: _____ Fax: _____ E-mail: _____

Signature:

Backup Contact Information:

Name: _____ Title: _____ Phone: _____

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

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

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

Exceptions to Representations Under Section 1.5(s)

None

General Contractor Certificate

July 1, 2008

New York City Industrial
Development Agency
110 William Street, 4th Floor
New York, NY 10038

Re: New York City Industrial Development Agency (United Airconditioning Corp. II) Project to assist in the financing of improvements to the premises known as 27-02 Skillman Avenue, Long Island City, New York 11101, Block 271, Lot 10 (the "Premises")

To Whom It May Concern:

The undersigned ("General Contractor") understands that New York City Industrial Development Agency is providing financial assistance to United Airconditioning Corp. II (the "Company"), which financial assistance will be used to assist the Company with the construction of the improvements described in Exhibit A hereto (the "Improvements") on the Premises (the "Project") as contemplated by the Lease Agreement by and among New York City Industrial Development Agency, United Airconditioning Corp. II, United Sheet Metal Corp. and UAC Service Corp., dated July 1, 2008. General Contractor has been engaged to act as the general contractor in connection with the Improvements pursuant to the provisions of a certain contract between the Company and the General Contractor dated [_____] (the "Contract"). No later than September 15, 2008, the General Contractor will prepare and deliver to Company certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in the Architect's Certification, dated August 15, 2008, by John Carusone, AIA, the architect for the Project.

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

1. All permits, licenses, certificates, consents and approvals required in connection with the commencement of construction of the Improvements, including but not limited to, curb-cut permits, building permits and permits relating to utilities, have been duly, validly and unconditionally issued by the appropriate governmental agencies (federal, state and local) and private authorities and agencies.
2. The following are the approvals, authorizations, permits or licenses currently issued that are necessary to construct and operate the Improvements, pursuant to any law, rule, ordinance or regulation affecting the Premises, including environmental laws, rules, ordinances or regulations:

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

Program

Department of Environmental Protection

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

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

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

5. The Plans and Specifications for the construction of the Improvements on the Premises have been approved by all necessary agencies of the City of New York.

6. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

7. General Contractor is duly licensed and in good standing in the State of New York to perform all work described in the Contract.

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

Very truly yours,

BID INTERIOR CONSTRUCTION INC.

By _____

Name:

Title:

EXHIBIT A

The term "Improvements" as used herein shall, collectively, mean the acquisition, renovation and equipping of an approximately 27,600 square foot manufacturing facility on a 27,792 square foot parcel of land located at 27-02 Skillman Avenue, in Long Island City, New York 11101, to be used by the Company in connection with the manufacturing of heating, ventilation, air conditioning and mechanical systems for commercial buildings.

Architect's Certificate

July 1, 2008

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

Re: New York City Industrial Development Agency (United Airconditioning Corp II.) Project to assist in the financing of improvements to the premises known as 27-02 Skillman Avenue, Long Island City, New York 11101, Block 271, Lot 10 (the "Premises")

To Whom It May Concern:

The undersigned ("Architect") understands that New York City Industrial Development Agency ("IDA") is providing financial assistance to United Airconditioning Corp. II (the "Company"), which financial assistance will be used to assist the Company with the construction of the improvements described in Exhibit A attached hereto (the "Improvements") on the Premises (the "Project") as contemplated by the Lease Agreement by and between the New York City Industrial Development Agency, United Airconditioning Corp. II, United Sheet Metal Corp. and UAC Service Corp., dated as of July 1, 2008. Architect has been engaged to act as the architect for the Improvements pursuant to the provisions of a certain architectural contract also described in Exhibit A attached hereto (the "Contract"). No later than August 15, 2008, Architect will prepare certain plans and specifications (the "Plans and Specifications") for use in connection with the construction of the Improvements, as more particularly described in Exhibit B attached hereto.

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

1. The Architect prepared and supervised the preparation of the Plans and Specifications.
2. All of the Improvements are located within the boundaries of the Premises and in accordance with all "set-back" requirements. To my knowledge after due inquiry, limited to a review of the Title Report, issued on October 1, 2007 by Accord Abstract LTD. (the "Title Report") and the survey of the Premises, prepared by Fehringer Surveying, dated March 8, 2008 (the "Survey"), the location of the Improvements, if constructed substantially in accordance with the Plans and Specifications, will not be affected by any existing easements affecting the Premises, nor will the Improvements be located within or encroach into any easement area, nor shall the location of the Improvements violate any restriction, condition or covenant affecting the Premises.
3. The Plans and Specifications will comply with all applicable federal, state and municipal laws, ordinances, rules and regulations regarding zoning, building and fire codes and ordinances. To my knowledge after due inquiry, limited to a review of the Title Report and the Survey, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will likewise comply with all covenants, conditions, easements and restrictions to which the Improvements are subject.

4. The Premises is zoned in accordance to the NYC Zoning Ordinance and such zoning classification permits the construction of the Improvements and the as contemplated in the Plans and Specifications and the intended use of the Premises by the Company.

5. The Premises does not require any additional on-site parking to satisfy all zoning and other governmental requirements. Sanitary public water supply, storm sewer facilities, sanitary sewer facilities, natural gas, electricity, telephone, and all other required utilities are available, sufficient to meet all applicable requirements of public authorities, at or within the lot lines of the Premises, without the necessity of any off-site improvements, or any on-site improvements other than as shown in the Plans and Specifications. No easements over land of others is called for or indicated by the Plans and Specifications for access or egress to the Premises or parking on the Premises, or for any such facilities or utilities, and design conditions are such that no drainage of surface or other water across land of others is called for or indicated by the Plans and Specifications.

6. Water, sewer, drainage, gas, electric, telephone and other utilities required for the development and operation of the Improvements are available or have been included in the Plans and Specifications of sufficient design and capacity to meet the requirements of the Improvements.

7. The Premises constitutes one (1) legally subdivided zoning lot which is separate from any other parcel of real property.

8. The budget (with projected draw schedule) attached hereto as Exhibit B, when prepared by Architect and approved by the Company, will completely and accurately reflect the correct, anticipated cost and projected timing of construction of the Improvements as designed. The amounts set forth in the budget are adequate and sufficient for satisfying all fees and expenses of Architect in designing the Improvements.

9. The Plans and Specifications for the construction of the Improvements on the Premises will be approved by all necessary agencies of the City of New York.

10. To my knowledge, there is no petition, action or proceeding known to the undersigned pending before the court, agency or official, threatened with respect to the validity of any statutes, ordinances, regulations, restrictions, codes, rules, permits, certificates or any permits or approvals thereunder relating to the Improvements, or to revoke, rescind, alter or declare any of the same.

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

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

Very truly yours,

By _____
Name: John Carusone AIA
Title:

EXHIBIT A

1. The Improvements

The term "Improvements" as used herein shall, collectively, mean the acquisition, renovation and equipping of an approximately 27,600 square foot manufacturing facility on a 27,792 square foot parcel of land located at 27-02 Skillman Avenue, in Long Island City, New York 11101, to be used by the Company in connection with the manufacturing of heating, ventilation, air conditioning and mechanical systems for commercial buildings.

2. The Architects Contract

Contract dated June 27, 2008, between Company, as owner, and John Carusone, AIA as architect.

EXHIBIT B

List of Plans and Specifications To be Delivered to the Agency by August 1, 2008

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

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 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.

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.



THE FOLLOWING IS TO BE COMPLETED ONLY BY RECIPIENTS OF A LETTER OF SALES TAX AUTHORIZATION

Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of NYCIDA or the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program or through a 501(c)3 exemption

- 1. Value of sales and use tax exemption benefits granted by virtue of the exemption

authority of the NYCIDA or the City of New York..... \$ _____

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Subtenant, 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 _____ Date _____
Name / Title _____ Company Tax ID _____

PLEASE MAIL TO:

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

New York, NY 10038

OR FAX TO (212) 618-5738 or EMAIL ComplianceReporting@nycedc.com

If you have any questions about this form please contact the Compliance Hotline at 212-312-3963

July 1, 2008

New York City Industrial Development Agency
110 William Street, 4th Floor
New York, New York 10038
Attn: Executive Director

Ladies and Gentlemen:

Reference is hereby made to that certain Lease Agreement, dated as of July 1, 2008, between United Airconditioning Corp. II (the "Company"), and together with United Sheet Metal Corp. and UAC Service Corp., each a corporation duly organized under the laws of the State of New York (the "Lessee") and New York City Industrial Development Agency, a public benefit corporation of the State of New York (the "Agency") (the "Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

Undertaking to Provide Final Architect's Certificate. The Company shall obtain a final and fully executed Architect's Certificate, attaching the Contract, Plans and Specifications and Budget thereto (the "Final Architect's Certificate") and the Company shall deliver to the Agency such Final Architect's Certificate set forth on Exhibit A hereto promptly by August 15, 2008 (the "Architect's Certificate Date").

Undertaking to Provide General Contractor's Certificate. The Company shall obtain a fully executed General Contractor's Certificate (the "General Contractor's Certificate") and the Company shall deliver to the Agency such General Contractor's Certificate set forth on Exhibit B hereto promptly by September 15, 2008 (the "General Contractor's Certificate Date").

Undertaking to Provide OCP Insurance. The Company shall provide to the Agency a final and fully executed Certificate of Insurance for Owners and Contractors Protective Liability Insurance ("OCP Insurance"), naming the Agency as an Additional Insured, during any period of construction, renovation, improvement or reconstruction of any portion of the Facility, to the extent not covered by the commercial general liability insurance pursuant to the Agreement, owners and contractors protective liability insurance for the benefit of the Lessee and the Agency in a minimum amount of \$5,000,000 for the Facility (or such lesser amount agreed upon by the Agency, the Trustee and the Bondholder upon written request by the Lessee) aggregate coverage for bodily and personal injury and property damage, pursuant to the Agreement (the "OCP Insurance Certificate") and the Company shall deliver to the Agency such OCP Insurance Certificate promptly by December 1, 2008, but in any event, before any construction shall take place (the "the "OCP Insurance Certificate Date").

Undertaking With Regard to Violations. With respect to the Facility located at 27-02 Skillman Avenue, Long Island City, NY 11101, the Company shall clear all outstanding FDNY violations (i.e., 10730791K, 10730792M and 10961090X) (the "Violations") with evidence of same provided to the satisfaction of the Agency no later than January 1, 2009 (the "Violations Discharge Date").

The Lessee and Company hereby acknowledge and agree that their failure to perform the obligations set forth above within the time periods provided shall be deemed to constitute a material breach under the Agreement, and if not cured shall constitute an Event of Default thereunder and the Agency shall thereupon have the right to exercise the remedies set forth therein; provided, however, if the Final Architect's Certificate is not delivered before the Final Architect's Certificate Date, the General Contractor's Certificate is not delivered before the General Contractor's Certificate Date, the OCP Insurance Certificate is not delivered before the OCP Insurance Certificate Date or the Violations are not discharged on or before the Violations Discharge Date, even though (i) the Lessee and Company have used their best efforts, (ii) the Lessee and Company have not been negligent in their efforts to discharge the Violations, or deliver the Final Architect's Certificate, or deliver the General Contractor's Certificate, or deliver the OCP Insurance Certificate and (iii) the delay to discharge the Violations, or deliver the Final Architect's Certificate, or deliver the General Contractor's Certificate or deliver the OCP Insurance Certificate has been demonstrated by the Lessee and Company to the Agency's satisfaction to be beyond the Lessee's and Company's control, then the Agency, upon written request from the Lessee and Company may agree to reasonably extend the Violations Discharge Date or the Final Architect's Certificate Date or the General Contractor's Certificate Date or the OCP Insurance Certificate Date accordingly.

The Lessee and Company hereby affirm that this agreement does not constitute a waiver of any of the Agency's rights or remedies under the Agreement, including but not limited to, the Agency's Reserved Rights. The Agency is not responsible for any of the Final Architect's Certificate or the General Contractor's Certificate or the OCP Insurance Certificate or the Violations. By this agreement, the Agency undertakes no obligation to cure, discharge, or pay any penalty, fee or charge in connection with the cure or discharge of any of the Final Architect's Certificate or the General Contractor's Certificate or the OCP Insurance Certificate or the Violations.

The Lessee and Company agree to indemnify the Agency for any and all claims, damages, losses, liabilities, obligations, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, but not limited to, reasonable attorneys' fees) which the Agency may incur or be subject to, directly, or indirectly, (or which may be claimed against the Agency by any person whatsoever) by reason of or in connection with the Final Architect's Certificate or the General Contractor's Certificate or the OCP Insurance Certificate or the Violations.

This agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

UNITED AIRCONDITIONING CORP. II

By: _____
Name: Josip G. Grgas
Title: President

UNITED SHEET METAL CORP.

By: _____
Name: Josip G. Grgas
Title: President

U.A.C. SERVICE CORP.

By: _____
Name: Josip G. Grgas
Title: President

EXHIBIT A

- A. Architect's Certificate:
- B. General Contractor's Certificate:
- C. Violations:

APPENDIX A

(Final Architect's Certificate with Contract, Plans and Specifications and Budget attached thereto)

APPENDIX B
(General Contractor's Certificate)

APPENDIX C
(FDNY Violations)

BLOCK 271, LOT 10 (QUEENS COUNTY) FDNY VIOLATIONS:

#10730791K	2/6/2001	FDNY VIOLATION – Failure to produce permit and obtain Certificate of Fitness
#10730792M	2/6/2001	FDNY VIOLATION – Failure to maintain sprinkler, etc.
#10961090X	5/25/2006	FDNY VIOLATION – Failure to produce permit and obtain Certificate of Fitness