

LEASE AGREEMENT

Dated February 28, 2007

by and between

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

CENTURY CARRIERS, INC.

Century Carriers, Inc.

Affecting the Land generally known by the street address
55 Engineers Lane, located
in the County of Suffolk,
Farmingdale, New York
as more particularly described in
Exhibit A to this Lease Agreement
and which is also known as
District 100, Section 7, Block 1, Lots 41.9
on the Official Tax Map of Suffolk County

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into February 28, 2007 (this "**Agreement**"), by and between **TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), party of the first part, having its principal office at 57 West Sunrise Highway, Lindenhurst, New York 11757, and **CENTURY CARRIERS, INC.**, a corporation organized and existing under the laws of the State of New York (the "**Company**"), party of the second part, having its principal office at 55 Engineers Lane, Farmingdale, New York 11735:

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 buildings or other improvements, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 177 of the 1973 Laws of New York, as amended (together with the Enabling Act, the "**Act**") for the benefit of the Town of Babylon and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company for the acquisition of a "project" within the meaning of the Act (the "**Project**") within the territorial boundaries of the Town of Babylon, New York and located on that certain lot, piece or parcel of land generally known as and located at 55 Engineers Lane, Farmingdale, New York (the "**Land**") and otherwise described in Exhibit A attached hereto; and

WHEREAS, the Project will include the acquisition of the Land and the acquisition, renovation and equipping of an approximately 88,400 square foot building thereon (the "**Premises**"), all for use by the Company as a warehouse and distribution facility in its business of shipping, transportation and home delivery of furniture, mattresses and other home goods; and the acquisition, from time to time of machinery, equipment, furniture, fixtures and other tangible personal property (the land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or

the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the “**Facility**”); and

WHEREAS, the Company is the tenant under an Agreement of Lease (the “**Prime Lease**”) dated June 17, 2005, between the Company and 55 Farmingdale, LLC (the “**Sublandlord**”); and

WHEREAS, the Sublandlord has conveyed to the Agency the Premises pursuant to a deed subject to revisions, dated the date hereof (the “**Deed**”); and

WHEREAS, the Agency is presently the owner of the Premises and has leased the Premises to the Sublandlord pursuant to an Overlease Agreement dated the date hereof between the Agency and the Sublandlord (the “**Overlease Agreement**”); and

WHEREAS, pursuant to the provisions of a Company Lease Agreement between the Company and the Agency dated the date hereof (the “**Company Lease**”), the Company has sub-leased the Premises to the Agency and pursuant to the provisions hereof the Agency has sub-sub-leased the Premises to the Company; and

WHEREAS, to facilitate the Project, the Agency and the Company have entered into negotiations to enter into a “straight lease transaction” with respect to the Premises and, in furtherance of such purposes, on February 14, 2006 the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project; and

WHEREAS, the provision by the Agency of financial assistance to the Company through a straight lease transaction has been determined to be necessary to induce the Company to proceed with the Project and thereby to retain, locate and increase the number of jobs in Town of Babylon; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Company the Agency’s interest in the Facility;

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

Act shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 177 of the 1973 Laws of New York, as amended.

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

An **Affiliate** of a Person shall mean a Person which directly or indirectly through one or more intermediaries controls, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of more than 50% of the voting stock or other equity interest of such Person.

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

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

Approved Facility shall mean a warehouse and distribution facility for use in connection with the Company's (or any Affiliate thereof or permitted sublessee hereunder) business of shipping, transportation and home delivery of furniture, mattresses and other home goods; and the acquisition, from time to time of machinery, equipment, furniture, fixtures and other tangible personal property.

Authorized Representative shall mean, (i) in the case of the Agency, the Chief Executive Officer or Deputy Chief Executive Officer, of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Company; and (ii) in the case of the Company, its president or any other employee who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Company has given written notice to the Agency.

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

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

Commencement Date shall mean February 28, 2007 on which date this Agreement was executed and delivered.

Company shall mean Century Carriers, Inc., a corporation organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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

Deed shall mean the Deed referred to in the recitals to this Agreement.

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 that machinery, equipment and other tangible personal property acquired and installed in accordance with the Sales Tax Letter as part of the Project pursuant to Section 2.2 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Company's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof), as more particularly described in Exhibit B "Description of the Facility Equipment" hereto, which is made a part of this Agreement. "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personalty which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, *objects d'art* or other similar decorative items.

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

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

Guarantors shall mean the Company and John Selloni.

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

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

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

Land shall mean that certain lot, piece or parcel of land generally known by the street address located at 55 Engineers Lane, Farmingdale, New York, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

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

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

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

Overlease Agreement shall mean the Overlease Agreement referred to in the recitals to this Agreement.

Permitted Encumbrances shall mean:

- (i) this Agreement, the Company Lease, the Prime Lease and the Overlease Agreement;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;
- (iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;
- (iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility Equipment or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency will not materially interfere with or impair the Company's use and enjoyment of the Facility as herein provided;

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Company delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

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

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

Prohibited Person shall mean:

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

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

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

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

of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).

Project shall mean the acquisition of the Land and the Improvements and the renovation thereof and the acquisition of the Facility Equipment thereon or therein, all for use by the Company as an Approved Facility.

Project Cost Budget shall mean that certain budget for costs of the Project as set forth by the Company in Exhibit C - "Project Cost Budget" attached to this Agreement.

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

Project Documents shall mean the Deed, this Agreement, the Company Lease Agreement, the Overlease Agreement, the Guaranty Agreement and the Sales Tax Letter.

Rental Payments shall mean, collectively, Base Rent, Additional Rent and amounts due under Section 4.3 hereof.

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 Company.

State shall mean the State of New York.

Sublandlord shall mean the Sublandlord referred to in the recitals to this Agreement.

Taxable Status Date shall mean March 1 of each year or any other date selected by the Town as the date on which the Town shall determine in accordance with law which parcel or parcels of real property located in the Town will be subject to real property taxation.

Taxing Jurisdictions shall have the same meaning as provided in the Act.

Town shall mean the Town of Babylon, New York.

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

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

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

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

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

(e) Any consent required of any party hereto unless otherwise herein specifically herein provided shall not be unreasonably withheld by any party hereto.

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

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

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

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

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

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

(a) The Company 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 the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

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

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

(d) (Reserved).

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

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

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

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

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

(j) The Company is to the best of the Company's knowledge after reasonable inquiry, in compliance with, and the company will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(k) The Project Cost Budget attached as Exhibit C to this Agreement represents a true, correct and complete budget as of the Commencement Date of the proposed costs of the Project.

(l) The amounts to be provided to the Company and other moneys available to the Company, are sufficient to pay all costs in connection with the Project.

(m) Except as permitted by Section 4.3(i) hereof, no Person other than the Company, the Sublandlord or any Affiliate thereof or any Guarantor hereunder is or will be in use, occupancy or possession of any portion of the Facility.

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

(o) The Company is not a Prohibited Person.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

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

Section 2.2 The Project. (a) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring the Facility Equipment, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) paying all fees, costs and expenses incurred in undertaking the Project from funds made available therefor in accordance with or as contemplated by this Agreement (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project. The cost of the Project shall be financed from funds of the Company. In the event that moneys derived from the Company is not sufficient to pay the costs necessary to complete the Project in full and the Company shall not be entitled to any reimbursement therefor from the Agency, nor shall the Company be entitled to any diminution of the Rental Payments to be made under this Agreement.

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

(c) The Company unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental

agencies requisite to the Project and operation of the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Agreement. Promptly upon completion of the Project, the Company will obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Company, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Company, (i) that the Project has been completed and the date of completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that the Agency has good and valid marketable fee simple title to the Facility Realty and good and merchantable title in the Facility Equipment and that all property constituting the Facility is subject to this Agreement, the Company Lease and the Overlease Agreement, subject only to Permitted Encumbrances, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project.

Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) that no Person other than the Agency may benefit therefrom. Such certificate of the Authorized Representative of the Company shall be accompanied by (i) a permanent certificate of occupancy to the extent received, and any and all permissions, approvals, licenses or consents required of governmental authorities for the operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Company that all costs of the Project have been paid in full, except for those costs being contested in accordance with Section 6.5(b) hereof, together with 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; and (iii) evidence satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 hereof, in respect of the Facility have been paid in full. Upon request by the Agency, the Company shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

Section 2.3 Title Insurance. On or prior to the Commencement Date, the Company will cause to be obtained and delivered to the Agency (a) a fee title insurance policy in an amount not less than \$500,000 insuring the Agency's fee simple interest in the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of the Land certified to the Agency. Any proceeds of such fee title insurance shall be paid to the Sublandlord and applied in the sole discretion of the Sublandlord.

Section 2.4 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of property effected by the Company as agent and the Sublandlord as subagent for the Agency, it being the intent of the parties that no operating expenses of the Company or the Sublandlord shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

(b) The Company and the Sublandlord covenant and agree that each shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Company as agent or the Sublandlord as subagent for the Agency in connection with the Project:

“This contract is being entered into by [CENTURY CARRIERS, INC., a New York corporation/55 Farmingdale, LLC, a New York limited liability company] (the “Agent”), as agent for and on behalf of the Town of Babylon Industrial Development Agency (the “Agency”) in connection with a certain project (the “Project”) of the Agency for Century Carriers, Inc., consisting of the renovation and equipping of an approximately 88,400 square foot warehouse and distribution facility in its business of shipping, transportation and home delivery of furniture, mattresses and other home goods; and the acquisition, from time to time of machinery, equipment, furniture, fixtures and other tangible personal property for use at the certain premises located at 55 Engineers Lane, Farmingdale, New York (the “Premises”). The items of equipment and personalty shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached Sales Tax Letter of the Agency; and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Letter. This [contract, agreement, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Company or the Sublandlord shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, 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 neither the Company nor the Sublandlord will claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Company and the Sublandlord shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, from the date of such taking.

(c) Prior to the Commencement Date the Agency delivered to the Company a preliminary Sales Tax Letter which was effected as of August 1, 2005. The Agency and Company agree that the Preliminary Sales Tax Letter with respect to the Facility has expired on November 30, 2005 and on the Commencement Date, the Agency shall make available to the Company and the Sublandlord for use with respect to the Facility, the Sales Tax Letter. The Agency, at the sole cost and expense of the Company or the Sublandlord, as the case may be, 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 Company and the Sublandlord to obtain the intended benefits thereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Company and the Sublandlord pursuant to this Agreement and the Sales Tax Letter shall be limited in duration to February 28, 2008:

(i) The Sales Tax Letter shall be dated the date hereof and shall be effective for a term commencing on its date and expiring upon the earliest of (1) the termination of this Agreement, (2) February 28, 2008, or (3) the termination of the Sales Tax Letter pursuant to the terms thereof.

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

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

(A) shall not be available for payment of any costs other than the costs of the Project or for any items of personalty except Facility Equipment and building materials utilized with respect to the Project,

(B) shall only be utilized for building materials and Facility Equipment which shall be purchased, completed or installed for use only by the Company and its Affiliates at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such items of property to a Person as shall not constitute the Company or an Affiliate), it being the intention of the Agency, the Company and the Sublandlord that the sales and use tax exemption shall not be made available with respect to any item of building materials or Facility Equipment unless such item is used solely by the Company, and its Affiliates at the Facility Realty,

(C) shall not be available for any item of building materials which is not to be incorporated as part of the Improvements,

(D) (Reserved)

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

hereof; **provided, however,** that in the event the Company or the Sublandlord shall thereafter cure or cause to be cured any defaults under this Agreement or the Overlease Agreement as the case may be, 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 Company as agent or the Sublandlord as sub-agent respectively for the Agency for use by the Company and any of its Affiliates at the Facility Realty,

(G) (Reserved)

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

(I) shall not be available subsequent to the termination of this Agreement or the Overlease Agreement, and

(J) shall only be available for those costs as set forth as permitted hereunder.

(iv) In the event that the Company or the Sublandlord shall utilize the sales or use tax exemption provided pursuant to the Sales Tax Letter in violation of the provisions of paragraph (c)(iii) of this Section 2.4, the Company and/or the Sublandlord shall promptly deliver notice of same to the Agency, and the Company or the Sublandlord shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) 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 Company or the Sublandlord.

(v) The Company shall, on or before January 1 of each year, commencing January 1, 2006, and ending on the earlier of the termination of this Agreement, and January 1, 2009 deliver to the Agency a certificate of an Authorized Representative of the Company and the Sublandlord certifying (i) as to each sales or use tax exemption availed of by the Company and the Sublandlord the dollar amount of same and the date availed of, all as availed of by the Company and the Sublandlord in the immediately preceding calendar year (i.e., January 1 through December 31 for the certificate to be delivered on January 1, except that the first such period shall commence on the Commencement Date through January 1, 2009), and the specific items of Project costs to which they shall relate, (ii) that all such sales or use tax exemptions so availed of were in compliance with the provisions of the Sales Tax Letter and Section 2.4(c) hereof, and (iii) as to the dollar amount of all sales and use tax exemptions availed of by the Company and the Sublandlord from the Commencement Date through the end of the calendar year period to which such certificate shall relate.

(vi) Upon request by the Agency of, and reasonable notice to, the Company and the Sublandlord, the Company and the Sublandlord shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Company and the Sublandlord and require all appropriate officers and employees of the Company and the Sublandlord 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 Company and the Sublandlord shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(vii) (Reserved)

(viii) Any expenditure made by the Company or the Sublandlord for the acquisition of Facility Equipment or building materials in conjunction with the use of the Sales Tax Letter shall constitute payment of rent hereunder.

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

(e) The Company shall annually file a statement (Form ST-340 or any successor or additional mandated form) with the New York State Department of Taxation and Finance, in the form of Schedule B attached hereto or a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company, the Sublandlord or agents of the Company or the Sublandlord 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 Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Company fail to comply with the foregoing requirement, the Company and the Sublandlord shall immediately cease to be the agent and subagent 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 Company and the Sublandlord shall be deemed to have automatically lost its authority as agent and subagent of the Agency to purchase and/or lease property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Company and the Sublandlord by the Agency which is in the Company's and the Sublandlord's possession or in the possession of any agent of the Company or the Sublandlord. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

(f) (Reserved)

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby leases to the Company, and the Company hereby leases from the Agency, the Facility for and during the term herein and

subject to the terms and conditions herein set forth. The Agency hereby delivers to the Company, and the Company hereby accepts, sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Agency of the Facility as the same is acquired, constructed and renovated shall take no further act or deed by the parties hereto).

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

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on February 28, 2018, or such earlier date as this Agreement may be terminated as hereinafter provided.

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

(b) *Additional Rent.* Throughout the term of this Agreement, the Company shall pay to the Agency any additional amounts (including amounts payable under Section 4.3 hereof) required to be paid by the Company to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent. Additional Rent shall not include any payments due from the Company to the Sublandlord as rent under the Prime Lease except to the extent that such payment obligation constitutes an obligation to the Agency hereunder.

(c) *Missed Payments.* In the event the Company should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at twelve percent (12%) per annum.

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Company will keep or use reasonable efforts to cause the Sublandlord to keep in accordance with the Prime Lease, the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make to the extent required under the Prime Lease or use reasonable efforts to cause to the Sublandlord to make in accordance with the Prime Lease all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that the operations of the Company at the Facility shall not be impaired or diminished in any way. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all 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 Company hereby agrees to assume full responsibility therefor.

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

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

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

(iii) subject to Section 6.5(b), such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, and

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

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, and the Company shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title to such property to the Agency and to subject

such property to this Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

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

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

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

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

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

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition, renovation and equipping of an approximately 88,400 square foot building and real property related thereto located in 55 Engineers Lane, Farmingdale, New York being District 100, Section 7, Block 1, Lot 41.9.

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

The PILOT Commencement Date shall be as defined in subsection (d) hereof. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Company shall pay to the Town or the Agency as the case may be all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Facility Realty were owned by the Company and not owned by the Agency.

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

It is recognized that under the provisions of the Act the Agency is generally required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Company agree, however, that the Company shall be required to make payments in lieu of real estate taxes with respect to the Facility Realty, payable to the Agency, in the manner and at the time provided in subsection (d) below or at such other times as the Agency may designate in writing.

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 Town Collector of Taxes, the Assessors' Office of the Town, the Town Surveyor, or any other relevant official of the Town, 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 Town of Babylon or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

For the period commencing on the PILOT Commencement Date (hereinafter defined) until the earlier of (i) February 28, 2018 (the "**Abatement Termination Date**") or (ii) the date on which the Agency no longer owns the Facility Realty, the Company shall make payment in lieu of real estate taxes, as follows:

Definitions

X = the then current assessed value of Facility Realty from time to time

PILOT Commencement Date = the Taxable Status Date of the Town immediately following the date hereof.

Normal Tax Due = those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Babylon (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, which the Company would pay without exemption.

Payment

Tax Year (following the PILOT Commencement Date)

- 1 50% Normal Tax Due on X
- 2 55% Normal Tax Due on X
- 3 60% Normal Tax Due on X
- 4 65% Normal Tax Due on X
- 5 70% Normal Tax Due on X
- 6 75% Normal Tax Due on X
- 7 80% Normal Tax Due on X
- 8 85% Normal Tax Due on X
- 9 90% Normal Tax Due on X
- 10 95% Normal Tax Due on X
- 11 and thereafter 100% Normal Tax Due on X

The tax benefits provided for in this subsection (d) shall be deemed to commence on the PILOT Commencement Date. In no event shall the Company be entitled to receive real property tax benefits under this agreement for a period longer than the period set forth in the formula above. Notwithstanding the foregoing schedule, the Company further covenants and agrees that for any period that the Agency continues to hold title to the Facility after February 28, 2018, the Company shall pay 100% of the Normal Tax Due on X together with any special assessment and services charges relating to the Facility whichever may be imposed for special district improvements in accordance with the provisions of this Section 4.3.

(e) The Company shall pay the amounts set forth in paragraph (d) above, as applicable, within 40 days after receipt of bills from the Agency. Failure to receive a bill shall not relieve the Company, of its obligation to make all payments provided for hereunder, but no penalties or interest shall accrue for any bills not received by the Company. Payments shall be made directly to the Agency. Payments made after the due date(s) as set forth in the applicable bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Jurisdictions.

(f) To the extent the Facility is declared to be subject to real property taxation or assessment by a final judgment of a court of competent jurisdiction, or pursuant to an amendment to the Act, or other legislative change, the obligations of the Company to make payments in lieu of real estate taxes under this Section 4.3 shall, to such extent, be null and void.

To the extent permitted by law, any payments previously made shall be credited against any taxes then due and payable and nothing herein contained shall prohibit the Company or the

Sublandlord from contesting the validity or constitutionality of any such amendment, legislative change or judicial decision.

(g) If the Company or the Sublandlord enters into any written agreement with any Taxing Jurisdiction providing for payments in lieu of taxes by the Company or the Sublandlord to any or all of them, this Section 4.3 as it relates to the Taxing Jurisdiction with which the Company or the Sublandlord has entered into said written agreement shall be automatically modified to reflect the terms of any such written agreement, and any such written agreement shall be deemed to be incorporated into this Section 4.3 by reference and made a part hereof as an amendment or modification hereof. Should the Company or the Sublandlord receive any real property tax exemption from any of the Taxing Jurisdictions, this Section 4.3 shall automatically be modified to reflect the extent of such exemption.

(h) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project, the Company or the Sublandlord shall make any alterations of or additions to the Facility Realty (the “**Additional Improvements**”), the Company or the Sublandlord as the case may be shall deliver written notice to an Authorized Representative of the Agency of same within thirty (30) days after the completion thereof. The Agency shall thereupon request that the Improvements constituting a part of the Facility Realty (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the Town and the Company shall make additional payments in lieu of taxes equal to:

(1) the amount of increase in assessed valuation of the Facility Realty resulting from the Additional Improvements when the Additional Improvements are first assessed as completed as above provided, multiplied by

(2) the Town’s real property tax rate prevailing after such first assessment and thereafter.

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

The Company understands and agrees that the Company is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Company would have been required to pay as if it were the owner of the Land and Improvements constituting the Facility Realty for that portion of the Facility Realty, if any, utilized or occupied by any Person other than the Company, or any Affiliate thereof for so long as such utilization or occupation shall continue. The Company hereby represents to the Agency that no portion of the Facility Realty is utilized or occupied or is intended to be utilized or occupied by Persons other than the Company, or any Affiliate thereof. The Company agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Facility Realty utilized or occupied by any Person other than the Company, or Affiliates of the Company. The Company understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Company as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Company would have been required to pay as if it were the owner of the Facility Realty for that portion of the Facility Realty utilized or occupied by Persons other than the Company, or Affiliates thereof for so long as such utilization or occupation shall continue.

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

(j) *Survival of Obligations:*

The obligations of the Company 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.

(k) *Credits for payments made under the Overlease:*

Notwithstanding any other obligation of the Company contained in this Section 4.3, the Company shall receive a credit with respect to any payment obligation contained in subsection 4.3(c),(d), (e),(j) or (k) hereof for any payments made by the Sublandlord to the Agency pursuant to the corresponding payment obligation of the Sublandlord contained in Section 10 of the Overlease Agreement and payment of said amounts by the Sublandlord under Section 10 of the Overlease Agreement shall be deemed to satisfy the payment obligations of the Company under Sections 4.3 (c), (d), (e), (j) and (k) hereof.

Section 4.4 **(Reserved)**.

Section 4.5 **Insurance.** (a) Notwithstanding any other provision of any agreement to the contrary, at all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Company shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

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

(ii) (A) Property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by property damage insurance), Builders' All Risk insurance, whether by endorsement or otherwise, written on 100% builders' risk completed value, non-reporting form including coverage therein for "completion and/or premises occupancy", all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the

Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Company and the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Company and approved by the Agency) not less often than once every year, at the expense of the Company; any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Company is its own insurer to the extent of \$50,000 of such risks;

(iii) General liability insurance and/or Umbrella Liability Insurance, including contractual liability coverage in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence per aggregate, which insurance (A) will provide coverage of the Company, obligations of indemnity under Section 6.2 hereof (other than under Section 6.2(c) hereof to the extent not commercially reasonably available to the Company), and (B) may be effected under overall blanket or excess coverage policies of the Company or any Eligible Affiliate thereof provided, however, that at least \$500,000 is effected by General Liability insurance policy, any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type as that of the Company;

(iv) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company, or the Agency are required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Company or any contractor or subcontractor performing work with respect to the One Liberty Plaza Project Property. The Company shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their respective employees required by law; and

(v) Such other customary insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require provided such coverage is reasonably available at commercially reasonable premiums and are of the types and level of coverage typically maintained by similar businesses, and buildings in the City.

(b) All insurance required by Section 4.04(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "A-/X" or better by AM. Best & Co., or (ii) approved by the Agency. The Agency may change such rating requirements if reasonably required by substantial changes in insurance industry premiums, risks or coverage provided that such change does not impose a substantial hardship of financial burden on the Company in comparison to the ratings of carriers typically providing average for similar business and buildings in the City. Each of the policies or binders evidencing the insurance required above to be obtained shall designate (except in the case of workers' compensation, Builder All Risks, and property damage insurance) the Company and the Agency as additional insureds as their

respective interests may appear, and, with respect to Builders All Risks Insurance designate the Agency as its interest may appear;

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

(i) designate the Company insurance as the named insured (except in the case of workers' compensation insurance) designate under the Comprehensive General Liability Policy, the Agency as additional insureds and with respect to Property Insurance designate the Agency as loss payees as their interests appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the Facility be endorsed and made payable to the Sublandlord;

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

(iv) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Company or any other Person; the operation or use of the Facility for purposes more hazardous than permitted by the terms of the policy; any foreclosure or other proceeding or notice of sale relating to the Facility; or any change in the title to or ownership of all or any portion of the Facility;

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

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

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

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of

properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Facility owned or operated by them or their Affiliates.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be paid to the Sublandlord so insured and applied in accordance with Section 5.1 hereof.

(e) On the date hereof, the Company shall deliver or cause to be delivered to the Agency, a broker's certificate of coverage, certificate of liability insurance, evidence of property insurance and certificates or other evidence of other required insurance, and as soon as possible thereafter, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.3. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Company or the Sublandlord as the case may be shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.3. The Company or the Sublandlord as the case may be shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.3 would or might be suspended or impaired.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTERESTS OF THE COMPANY, THE SUBLANDLORD OR ANY OTHER PERSONS.

Section 4.6 Advances by Agency. In the event the Company fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first notifying the Company of any such failure on its part (except that no prior notification of the Company shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, from the date advanced, the Company will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with Law. The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without

limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the “**Legal Requirements**”), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. Notwithstanding the foregoing, the Company shall not be responsible for the noncompliance by the Sublandlord with any Legal Requirement with respect to the Facility: (i) if the Company has no right under the Prime Lease to compel the Sublandlord to comply or cause compliance with such Legal Requirement with respect to the Facility; (ii) if the Sublandlord is required, or the Company reasonably believes the Sublandlord is required, under the terms of the Prime Lease to comply with such Legal Requirement, so long as the Company is exercising good faith diligent efforts to enforce such compliance; or (iii) if such non-compliance is the result of any action or failure to act on the part of the Sublandlord (which action or failure to act is not a breach of any obligation of the Sublandlord to the Company under the Prime Lease). The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Company (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

The Company 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, and (ii) such contest shall not result in the Company or the Agency being in any danger of any criminal liability for failure to comply therewith provided, however, if such contest could result in the Agency being in any reasonable danger of civil liability (including accrual of interest, fines and/or penalties), (y) the Company shall deliver a written confirmation to the Agency that the Company shall indemnify and hold the Agency harmless for any such claims, liabilities, costs or expenses as may derive with respect thereto and (z) the Company shall deliver to the Agency such security as the Agency may reasonably require.

Section 4.8 Enforcement of Rights Under Prime Lease Against Sublandlord. The Company Covenants and agrees that to the extent that the Sublandlord is obligated to the Company under the Prime Lease to comply with any Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations (including, without limitation, those relating to zoning, land use, environmental protection, air, water and land pollution, asbestos removal, toxic wastes, hazardous wastes, solid wastes, health, safety, equal opportunity, minimum wages and employment practices), whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter govern the ownership, improvement, maintenance and/or operation of the Facility (the foregoing covenants of the Sublandlord being the "Sublandlord Covenants"), the Company shall never amend, waive or modify, or permit the amendment, waiver or modification of, any of the Sublandlord Covenants, if the same would materially adversely affect the interests of the Agency (unless the Agency shall consent in writing thereto), and upon the direction of the Agency, the Company

shall promptly exercise good faith diligent efforts to enforce the Sublandlord Covenants against the Sublandlord.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

(b) In the event a Loss Event shall occur:

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

(ii) the Company shall exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

As soon as practicable but no later than one hundred twenty (120) days after the occurrence of the Loss Event, the Sublandlord and the Company shall advise the Agency in writing of the action to be taken under this Section 5.1(b).

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

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

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

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

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

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

(f) The Sublandlord shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to the Facility.

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

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Company covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a corporation, (ii) continue to be a corporation subject to service of process in the State and either organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its corporate property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; **provided, however,** the Company, without violating the foregoing, but with the prior written consent of the Agency (which consent shall not be unreasonably withheld), may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Company may elect).

Section 6.2 Indemnity. (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof (excluding the Sublandlord) and persons acting on the Agency's behalf in its official capacity under the

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

(b) The Company releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Company with respect to any of such matters above referred to provided that, the foregoing indemnity shall not apply to any losses directly arising from the gross negligence or willful misconduct on an Indemnified Party. Each Indemnified Party, as the case may be, shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge after reasonable inquiry, no prior owner of the Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage,

treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Company shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Company shall comply with and use its reasonable good faith efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its reasonable good faith efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however,** that if any such tenant or subtenant shall be an Affiliate of the Company, the obligation of the Company with respect to such Persons shall be absolute and not limited to reasonable good faith efforts. The Company shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by the Company under applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies and (y) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, (other than claims, demands, penalties, fines, liabilities, settlements, damage, costs or expenses directly relating to the gross negligence or willful misconduct of an Indemnified Party) known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affect the Facility during the Term of the Lease Agreement; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Company's obligations to carry out and perform all of the covenants stated in Section 4.7 hereof

and throughout this Section 6.2, including but not limited to, those covenants wherein the Company is obligated to indemnify each Indemnified Party and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

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

(e) Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Agency relating to the enforcement of the provisions herein specified.

(f) For the purposes of this Section 6.2, neither the Company nor the Sublandlord shall be deemed employees, agents or servants of the Agency or a person under the Agency's control or supervision.

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

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

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

of the release, stating that, in the opinion of the Person signing such certificate, the portion of the Facility Realty so proposed to be released and the release of such portion of the Facility Realty is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

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

Section 6.5 (Reserved).

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

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

The foregoing acknowledgments and covenants of the Company shall not prejudice any rights the Company may otherwise have against third parties.

Section 6.8 (Reserved).

Section 6.9 Employment Information, Opportunities and Guidelines.

(a) Annually, by January 1 of each year during the term of this Agreement, the Company shall submit to the Agency an employment report relating to the period commencing January 1 of the previous year and ending December 31 of the year of the obligation of the filing of such report, substantially in the form of Schedule A hereto, certified as to accuracy by the Company.

(b) The Company shall ensure that all employees and applicants for employment by the Company 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 the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company 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) Nothing in this Section shall be construed to require the Company to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.10 Further Assurances. The Company 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 Company, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 6.11 Recording and Filing. A memorandum of this Agreement shall be recorded by the Company in the appropriate office of the Register of the County of Suffolk, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

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

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b)(i) Failure of the Company to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.6, 4.7, 4.8, 5.1, 6.1, 6.2, 6.3, 6.9, 6.12, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency;

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

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Sublandlord, the Company, or any Guarantor, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Sublandlord, the Company or any Guarantor or of all or any substantial part of its respective assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of one hundred-twenty (120) days; or any order for relief against the Sublandlord, the Company or any Guarantor shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Sublandlord, the Company or any Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof or Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made (i) by the Company or any Guarantor in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by the Company herein or by any Guarantor

in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

- (g) An “Event of Default” by the Company under the Prime Lease shall occur and be continuing;
- (h) Any loss of title by the Agency to the Facility Realty;
- (i) An “Event of Default” under the Guaranty Agreement shall occur and be continuing;
- (j) An event of default by the Sublandlord shall have occurred and be continuing under the Overlease Agreement;
- (k) The Company or any Guarantor shall become a Prohibited Person; or
- (l) Failure of the Company or the Sublandlord to obtain a final Certificate of Occupancy from the Town with respect to the Facility within three (3) years of the Commencement Date.

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

- (a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Company shall cease and terminate, and in accordance with the provisions of the Deed and Section 7 of the Overlease, the Agency may convey all of the Agency’s right, title and interest in the Facility to the Sublandlord;
- (b) The Agency may bring an action for damages, injunction or specific performance;
- (c) The Agency may suspend or terminate the Sales Tax Letter or require the Company to surrender the Sales Tax Letter to the Agency for cancellation;
- (d) The Agency may thereafter require the Company or the Sublandlord as the case may be to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount which the Company would otherwise be required to pay if it were the owner of the Facility Realty; or
- (e) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from the Company’s obligations hereunder, including

without limitation, the obligations of the Company under Sections 4.3 (until such time as the Sublandlord shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

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

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

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

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1 Termination of Agreement. The Company has the right to terminate the Overlease Agreement, the Company Lease, and this Agreement by paying all amounts then due and payable under this Agreement, and any other Project Documents to which any of the Company is a party, 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 Company under Sections 6.2 and 8.5 hereof. In the event that the Company shall not have terminated this Agreement within ten (10) days after the February 28 immediately

following the tenth (10th) anniversary of the issuance of the Certificate of Occupancy by the Town with respect to the Facility, the Agency shall have the right to terminate this Agreement (subject to the survival of those provisions of this Agreement stated to survive in the last clause of the preceding sentence) and to require the Company to make the payments referred to in the preceding sentence.

Upon termination of this Agreement, the Agency, upon the written request and at the sole cost and expense of the Company shall execute such instruments as the Company and the Sublandlord may reasonably request to discharge this Agreement as a document of record with respect to the Facility Realty.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Sections 4.3 (until such time as the Company or Sublandlord shall again pay taxes as the record owner of the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

Section 8.2 [\[Reserved\]](#).

Section 8.3 [\[Reserved\]](#).

Section 8.4 [\[Reserved\]](#).

Section 8.5 [Recapture of Agency Benefits](#). It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide financial assistance to the Company and the Sublandlord on behalf of the Company for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a)(i) If there shall occur a Recapture Event after the date hereof, the Company shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first (4) years after the date hereof;

(B) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the date hereof;

(C) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the date hereof;

(D) forty per cent (40%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the date hereof; or

(E) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the date hereof.

As used in this Section 8.5 the term "**Benefits**" shall mean, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Company or the Sublandlord as the case may be during such time as the Agency was the owner of the Facility Realty by reason of the Agency's ownership, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Company or the Sublandlord as the case may be would have been required to pay during the term of this Agreement (within the meaning of Section 3.2 hereof) had the Town determined the amount of such real estate taxes as would be due if the Company or the Sublandlord as the case may be had been the owner of the Facility Realty during such term; and

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

As used in this Section 8.5 the term "**Recapture Event**" shall mean any of the following events:

(1) The Company shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(2) The Company shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town);

(3) The Company shall have transferred all or substantially all of its employees within the Town to a location outside of the Town;

(4) The Company shall have subleased all or any portion of the Facility in violation of the limitations imposed by Section 9.3 hereof, without the prior written consent of the Agency; or

(5) The Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility except as otherwise permitted hereunder.

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

(b) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof made within ten (10) years of the date hereof, which notification shall set forth the terms of such Recapture Event and/or disposition.

(c) In the event any payment owing by the Company under this Section 8.5 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the then current interest rate imposed on delinquent payments of real property taxes

until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section 8.5.

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

ARTICLE IX

MISCELLANEOUS

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

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

Section 9.2 Priority. This Agreement shall be subject and subordinate to the Prime Lease and the mortgages set forth in Schedule C hereto.

Section 9.3 Assignment or Sublease. (a) The Company shall not at any time (i) except as permitted by Section 6.1 hereof, assign or transfer this Agreement, nor (ii) sublet in

excess of one-third of the aggregate rentable square feet of the Facility, without the prior written consent of the Agency.

(b) Notwithstanding the foregoing, (x) the Company may sublease any part of the Facility to an Affiliate of the Company and (y) provided that with respect to each sublease under this Section 9.3:

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

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

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

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

(v) such assignment; transfer or sublease shall not legally impair in any respect the obligations of the Company for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Company shall be a party;

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

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

All leases must provide that the Company and its tenant shall, at the Agency's request furnish to the Agency an estoppel and attornment letter as to the leases in form and

(d) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Company, or the successors or assigns of the Company, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease,

or as modifying or limiting the rights of the Agency under the foregoing covenant by the Company.

Section 9.4 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

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

(x) if to the Sublandlord to 55 Farmingdale, LLC, c/o Sutton & Edwards Management, LLC, 1981 Marcus Avenue, Lake Success, New York 11042, Attention: Jan Burman, with a copy to Peter Curry, Esq. Farrell Fritz P.C., EAB Plaza, West Tower, 14th Floor, Uniondale, New York 11556.

(y) if to the Agency, to the Chief Executive Officer, Town of Babylon Industrial Development Agency, 47 West Main Street, Babylon, New York 11702, and

(z) if to the Company, Century Carriers, Inc., 55 Engineers Lane, Farmingdale, New York 11735, Attention: John Selloni, President.

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

Section 9.6 Prior Agreements Superseded. Except for the Project Documents, this Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Facility.

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

Section 9.8 Inspection of Facility. The Company will permit the Agency, or its duly authorized agent, at all reasonable times, to enter the Facility but solely for the purpose of (y) assuring that the Company is operating the Facility, or is causing the Facility to be operated, as an Approved Facility and a qualified “project” within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any

environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Company.

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

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

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

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

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

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 9.14 Non-Discrimination. (a) At all times during the maintenance and operation of the Facility, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company 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.

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

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chief Executive Officer and attested under the seal of the Agency by its Secretary, an Assistant Secretary or Counsel, and the Company has duly executed this Agreement all being done as of the year and day first above written.

(SEAL)

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

ATTEST:

By: _____

Name: Robert Stricoff,

Title: Chief Executive Officer

CENTURY CARRIERS, INC.

By: _____

Name: John Selloni

Title: President

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

On the __th of February, in the year two thousand and seven, the undersigned, personally appeared Robert Stricoff, 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

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

On the __th of February, in the year two thousand and seven, the undersigned, personally appeared John Selloni, 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

DESCRIPTION OF THE LAND

DESCRIPTION OF THE FACILITY EQUIPMENT

Facility Equipment shall mean that machinery, equipment and other tangible personal property acquired and installed in accordance with the Sales Tax Letter as part of the Project pursuant to Section 2.2 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Lessee's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof).

PROJECT COST BUDGET

Rehabilitation to Existing Building	\$59,000
Equipment Installation	<u>75,000</u>
	\$125,000

SCHEDULE A

Annual Employment Report
For the Year Ending _____, ____

In order to comply with Local and State employment reporting requirements, the Town of Babylon Industrial Development Agency must require all of its project companies to fill out and return the Report to the Agency no later than _____ 1, ____.

Project Company

Telephone # _____

Tax ID # _____

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

Number of existing FULL TIME JOBS

Number of existing PART TIME JOBS

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

Name of Company

Principal/Owner/Chief Financial Officer _____

(Please Print)

Signature _____ **Date** _____

**Annual Report of Sales and Use Tax Exemption ST-340
Claimed by Agent/Project Operator of
Industrial Development Agency/Authority (IDA)
For Period Ending December 31, 20__**

Project Information

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

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

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

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

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

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

6. Duration of project (years/months; actual or expected): ____/____/____
MM DD YY

Total sales and use tax exemptions	7	
name of officer, employee or authorized representative signing for the IDA agent/project operator	Title of person signing	
	Date	

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

File completed report to: NYS TAX DEPARTMENT, IDA UNIT, BLDG 9 RM 215,
W A HARRIMAN CAMPUS, ALBANY NY 12227.

General Information

The General Municipal Law (GML) and the Public Authorities Law require agents or project operators (also known as project occupants) of an Industrial Development Agency or Authority (i.e., an IDA) to file an annual report with the New York State Department of Taxation and Finance. The agent/project operators required to file this report are those persons the IDA appoints to act for and represent the IDA with regard to the project, and the industrial, manufacturing, commercial or other enterprise the IDA appoints to use, occupy or operate the project undertaken by the IDA. It does not include persons who are mere tenants of the IDA agent/project operator, nor does it include officers or employees of an IDA in their capacity as such officers or employees.

The reporting requirement applies to IDA projects commenced on or after August 21, 1993. The initial report that must be filed is for the period October 19, 1993, through December 31, 1994, and is due by September 30, 1995. Because September 30, 1995 is a Saturday, this initial report is actually due by October 2, 1995. Subsequent reports must be filed on a calendar-year basis and are due by the last day of February of the following year.

The report must show the total value of all state and local sales and compensating use taxes exempted during the reporting period as a result of the project's designation as an IDA project. The IDA agent or project operator must include in its report the value of the exemptions it obtained, as well as the value of the sales and use tax exemptions obtained by its contractors, subcontractors, consultants and other agents. You are not required to report separately the value of the sales and use tax exemptions obtained by contractors, subcontractors, consultants, etc., individually. However, since you must include the value of the exemptions they have obtained by reason of the IDA project's exempt status in the total amount you report on line 7, you should keep documentation of the amounts they provide to you for your use in completing this report, or in the event you are asked to produce this information.

Do not include in this report the amount of any sales and use _____ exemptions arising out of other provisions of the Tax Law on _____ manufacturer's production equipment exemption, research and development exemption, etc.)

Instructions

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.

Note: If more than one IDA is involved in a particular project, the IDA agent or project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of Project

Enter the name of the project, the address of the project site, and the number assigned to the project (if applicable). A separate report must be filed by the IDA agent or project operator for each project, even if authorized by the same IDA.

Line Instructions

Line 1 - Project purpose - Check the box that identifies the _____ 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 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 property (e.g., machinery, computers, etc.) on the project end. 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 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 or project operator, the general contractor for the project and any subcontractors, consultants or other agents.

Signature area

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

Mail completed report to: NYS Tax Department, IDA Unit, Bldg. 9 Rm 215, W A Harriman Campus, Albany NY 12227.

Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security number in the manner required by tax regulations, instructions and forms, is found in Articles 8, 15, 18-A, 28 and 28-A of the Tax Law and 42 US 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer the insurance awards and sales tax liabilities under the Tax Law, and for any other purpose authorized by law.

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

This information will be maintained by the Director of the Data Management Services Bureau, NYS Tax Department, Building 8, Room 905, WA Harriman Campus, Albany, NY 12227; telephone (from New York State only) 1 800 CALL TAX (1-800 225-5829); from areas outside New York State call (518) 438-8581

Need Help?

For forms or publications, call toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

For information, forms or publications, call the Business Tax Information Center at 1 800 972-1233. The call is toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. For information, you can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 485-68__.

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

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 the information and assistance numbers listed above.

Hotline for the Hearing and Speech Impaired - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling 1 800 634-2110 toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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

SCHEDULE C

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