

CITY PURPOSE SECURITY AGREEMENT
(EQUIPMENT)

CITY PURPOSE SECURITY AGREEMENT dated as of _____,
 (“**Security Agreement**”) made by _____, a not-for-profit corporation formed pursuant to the Not-For-Profit Corporation Law of the State of New York having its principal office at _____ (“**Grantor**”), in favor of THE CITY of NEW YORK (“**City**”) acting by and through its DEPARTMENT OF DESIGN AND CONSTRUCTION, having its principal office at 30-30 Thomson Avenue, Long Island City, New York 11101 (the “**Secured Party**”).

W I T N E S S E T H

WHEREAS, Secured Party has entered into a Funding Agreement dated as of _____ with Grantor (the Funding Agreement, as it may hereafter be amended from time to time, is referred to as the “**Funding Agreement**”); and

WHEREAS, it is a condition precedent to the making of the Funding by Secured Party under the Funding Agreement that Grantor shall enter into this Security Agreement and grant Secured Party the Lien contemplated by this Security Agreement.

NOW, THEREFORE, in consideration of the premises and in order to induce Secured Party to provide the Funding under the Funding Agreement, Grantor hereby agrees as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.01. Definitions. Defined terms utilized and not otherwise defined herein shall have the meanings assigned to such terms in the Funding Agreement and all other terms shall have the meanings assigned to such terms by the UCC (as defined below), unless the context otherwise requires. The following terms shall have the following meanings:

“**Collateral**” means each of the following:

(a) All machinery, equipment, furniture and fixtures listed in Schedule I attached hereto (including, without limitation, any software embedded therein), and all machinery, equipment, furniture and fixtures (including, without limitation any software embedded therein) purchased, paid for, or financed with the proceeds of the Funding, wherever located and whenever acquired, whether now owned or existing or hereafter acquired or created, together with all accessions thereto and all substitutions and replacements thereof and parts therefor; (collectively, the “**Equipment**”);

(b) All general intangibles, including, but not limited to, payment intangibles, trademarks, service marks, trade names, patents, copyrights and licenses, relating to any Collateral;

(c) all ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) relating to any Collateral; and

(d) all cash or non-cash proceeds of the sale or other disposition of any Collateral and, to the extent not otherwise included, all amounts paid or payable under any policy of insurance (whether or not Secured Party is named as a loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage, or otherwise with respect, to any

Collateral.

“**Obligations**” means the City Purpose Covenant, and all other past, present and future obligations of any kind of Grantor to Secured Party under the Transactional Documents, including, without limitation, the Funding Agreement and this Security Agreement, whether monetary or otherwise, including, without limitation, principal, interest, fees, expenses or otherwise; and all costs incurred by Secured Party to obtain, preserve and enforce the Lien granted hereby, collect and/or enforce any obligations secured hereby and preserve the Collateral, including, but not limited to, taxes, assessments, insurance premiums, repairs, reasonable attorneys’ fees and legal expenses, rent, storage costs, and expenses of sale.

“**Uniform Commercial Code**” and “**UCC**” means the Uniform Commercial Code as in effect in New York State from time to time.

ARTICLE 2

THE LIEN

Section 2.01. Grant of Security. As security for the Obligations, Grantor hereby pledges, transfers, assigns and grants to Secured Party a general Lien upon, and right of set-off against, all of Grantor’s right, title and interest in and to the Collateral.

Section 2.02. Responsibility for Collateral. Anything herein to the contrary notwithstanding, Grantor agrees that the Collateral shall remain at Grantor’s sole risk at all times, and Secured Party shall have no obligation or duty of any nature whatsoever with respect to any item of the Collateral or any matter or proceedings arising in connection therewith, including, without limitation, any obligation or duty to take any action to collect, preserve or protect its or Grantor’s rights in and to the Collateral.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Secured Party and such representations and warranties shall be continuing so long as any Obligations shall remain outstanding, as follows:

Section 3.01. Trade and Other Names. As of the date hereof, Grantor utilizes no trade names in the conduct of its business, except as stated in the Preamble hereto and stated below, and has not changed its name.

Section 3.02. Location of Collateral. Each item of the Collateral is located at the address of Grantor set forth above or as otherwise provided in the Funding Agreement.

Section 3.03. Ownership and Liens. Grantor owns the Collateral free and clear of all Liens, except for the Lien created by this Security Agreement and liens that arise by operation of law with respect to obligations of Grantor that are not yet due and payable. No financing statement or other instrument similar in effect covering all or any part of the Collateral is on file with any authority in any jurisdiction, except such as may have been filed in favor of Secured Party pursuant to the Funding Agreement or this Security Agreement.

Section 3.04. Use of the Collateral. The Collateral will not be used for personal, family, household or farming use. The Collateral shall be used solely for the purposes of the City Purpose Covenant and as otherwise authorized by the Funding Agreement.

Section 3.05. Creation of Lien. This Security Agreement creates a valid first priority Lien in the Collateral, securing Grantor's performance and payment of its Obligations under the Transactional Documents, including, without limitation, performance of the City Purpose Covenant, and all actions necessary or desirable to protect such Lien have been duly taken.

Section 3.06. No Authorization Required. No authorization, approval or other

action by, and no notice to or filing with, any governmental authority or regulatory body is required either for (a) the grant by Grantor of the Lien granted hereby or the execution, delivery or performance of this Security Agreement by Grantor or (b) the perfection of or the exercise by Secured Party of its rights and remedies hereunder.

Section 3.07. Complete and Correct Representations and Warranties. No representation, warranty, or statement by Grantor contained herein or in any of the Transactional Documents or other certificate or other document furnished or to be furnished by Grantor pursuant hereto contains or, at the time of delivery, shall contain any untrue statement of material fact, or omits, or shall omit, at the time of delivery, a material fact necessary to make it not misleading.

ARTICLE 4

CERTAIN COVENANTS

Section 4.01. So long as any Obligation shall remain outstanding, Grantor agrees as set forth below:

(a) From time to time, at its sole cost and expense, Grantor shall promptly execute and deliver all further financing statements, instruments and documents, and take all further action, as may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any Lien granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

(b) Grantor shall execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the Lien granted or purported to be granted hereby. In this connection, to the extent permissible under applicable law, Grantor

hereby authorizes Secured Party to execute in its name and stead and file one or more financing or continuation statements and amendments thereto with respect to all or any portion of the Collateral or, in the alternative, file any such financing or continuation statements and amendments thereto without the signature of Grantor.

(c) Grantor shall furnish Secured Party, from time to time, with such statements and schedules, and such other reports with respect to the Collateral as Secured Party may reasonably request, all in reasonable detail and in form and substance satisfactory to Secured Party. Upon Secured Party's request, Grantor shall deliver to Secured Party any and all evidence of ownership of, certificates of title to, and other documents evidencing any interest in, the Collateral or any item thereof.

(d) Grantor shall permit Secured Party, its employees and agents, at any time and from time to time, during business hours, upon prior notice to inspect the Collateral and any records pertaining thereto, and to make copies thereof and, upon request, if reasonably required under the circumstances, to deliver to Secured Party originals of such records and any instruments relating thereto.

(e) Grantor shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral except to the extent the validity thereof is being contested in good faith and by appropriate action and for which appropriate reserves are maintained.

(f) Grantor shall maintain the Collateral, at all times, free and clear of all Liens except for the Lien created by this Security Agreement. In furtherance of the foregoing, Grantor shall not file, or permit to be filed, with any authority in any jurisdiction any financing

or like statement in which Secured Party is not named as the sole secured party.

(g) Grantor shall use the Collateral for lawful purposes only with reasonable care and caution and in conformity with all applicable Requirements.

(h) Grantor shall cooperate in all respects with Secured Party in the exercise by Secured Party of its rights and remedies hereunder.

(i) Grantor shall use, hold and store each item of Equipment in compliance with the terms of the Funding Agreement and for no other purpose, together with all books and records of Grantor relating thereto in the possession of Grantor at the address therefor set forth above or as otherwise set forth below:

(except as may be necessary for maintenance or repair or as otherwise authorized by the Funding Agreement) and to notify Secured Party and obtain Secured Party's consent in writing to the removal of any item of Equipment to another location, at least thirty (30) days prior thereto. Grantor shall not permit any Equipment to become a part of or affixed to real property without first giving written notice to Secured Party and delivering to Secured Party any waivers, disclaimers and subordination agreements by any landlords or mortgagees of such real property as may be required by Secured Party, in order to preserve and protect the Lien granted herein against all Persons;

(j) Grantor shall maintain and preserve the Equipment at all times in the same condition, repair and working order as when new, ordinary wear and tear excepted, and in accordance with any manufacturer's manual. In the case of any loss or damage to any Equipment, as quickly as practicable after the occurrence thereof, Grantor shall make or cause to be made all repairs, replacements, and other improvements in connection therewith which are

necessary or desirable. Grantor shall promptly furnish to Secured Party a statement respecting any loss or damage to any Equipment; and

(k) Grantor shall not sell, lease, or otherwise transfer or assign any interest in Equipment (except that, to the extent authorized by the Funding Agreement, any Equipment may be substituted or replaced for other comparable Equipment provided that Grantor notifies Secured Party of such replacement or substitution and takes all necessary action to perfect Secured Party's Lien in such replaced or substituted Equipment).

Section 4.02. Insurance. The provisions of the Funding Agreement regarding insurance to be obtained and maintained by Grantor for the benefit of Secured Party by this reference shall be incorporated herein and made a part hereof as if fully set forth herein. Grantor shall maintain for the benefit of Secured Party, at the sole expense of Grantor, insurance with respect to the Collateral in accordance with the requirements of the Funding Agreement.

Section 4.03. Books and Records. Grantor shall maintain complete and correct books and records relating to the Collateral in the manner and to the extent required in the Funding Agreement.

ARTICLE 5

ADDITIONAL RIGHTS OF SECURED PARTY

Section 5.01. Secured Party Appointed Attorney-in-Fact. Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Security Agreement including, without limitation:

(a) to obtain and adjust insurance proceeds required to be paid to Secured

Party pursuant to the Funding Agreement;

(b) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any item of the Collateral;

(c) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) or (b) above; and

(d) to file any claims or take any action or institute any proceedings which Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Collateral.

Section 5.02. Secured Party May Perform. If Grantor fails to perform and/or observe any term, covenant or condition contained herein or in the Funding Agreement, Secured Party may, in its discretion, perform, or cause performance and/or observance of, such term, covenant or condition, and the expenses of Secured Party incurred in connection therewith shall be payable by Grantor together with interest at the Late Charge Rate upon demand by Secured Party and such expenses and interest shall constitute Obligations and be secured by this Security Agreement.

Section 5.03. No Implied Obligations on Secured Party. The rights conferred on Secured Party hereunder are solely intended to protect Secured Party's interest in Collateral and shall not imply any further obligations or impose any duty upon Secured Party to exercise any such rights. Except as required by law, Secured Party shall have no duty with respect to any item of Collateral, or to take any steps to preserve rights against prior parties or any other rights pertaining to any item of Collateral.

ARTICLE 6

REMEDIES AND RIGHTS UPON DEFAULT

Section 6.01. If any Event of Default shall have occurred:

(a) Secured Party shall have the following rights and remedies (to the extent permitted by applicable law), in addition to other rights and remedies of a secured party under the Funding Agreement and the UCC (whether or not the UCC applies to the affected Collateral), all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently:

(i) to enter upon any premises in which any of the Collateral may be located and, without interference from Grantor, take possession of the Collateral, and remove the Collateral;

(ii) to require Grantor to assemble all or any part of the Collateral and make it available to Secured Party at a time and place designated by Secured Party which is reasonably convenient to both parties; and

(iii) to sell, lease, transfer, assign and deliver, grant options for or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing, at public or private sale or proceeding or by other disposition, by one or more contracts or other method, in one or more parcels, at the same time or at different times, with or without having the Collateral at the place of sale or other disposition, and upon any terms, for such consideration (whether monetary or otherwise, including, without limitation, the promise to dedicate and/or make use of the Collateral for a public purpose satisfactory to the City), at such place(s) and time(s) and to such persons or entities, which, in the sole and absolute discretion of Secured Party, may best dedicate and/or make use of the Collateral for a public purpose satisfactory to the City, all without demand for

performance or any notice or advertisement whatsoever except where an applicable statute requires reasonable notice of sale or other disposition. (Grantor hereby agrees that the sending of ten (10) days' prior notice by ordinary mail, postage prepaid, to any address of Grantor set forth in this Security Agreement of the time and place of any public sale or of the time after which any private sale or other intended disposition is to be made shall constitute reasonable notice.)

(b) If any Collateral is sold by Secured Party upon credit or for future delivery, Secured Party shall not be liable for the failure of the purchaser to pay for same and, in such event, Secured Party may resell or otherwise dispose of such Collateral. Secured Party may buy any part or all of the Collateral at any public sale, and if any part of the Collateral is of a type customarily sold in a recognized market or is of the type which is the subject of widely distributed standard price quotations, Secured Party may buy at a private sale and may make payment therefor by any means.

(c) Secured Party may, at its option, complete the manufacture of any inventory included in the Collateral and, for this purpose, may use any premises and manufacturing facilities of Grantor and any licenses, patents, trademarks and other rights available to Grantor, all without cost. Secured Party shall not be obligated to make any sale of the Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale or other disposition of the Collateral from time to time by announcement at the time and place fixed therefor, and such sale or other disposition may without further notice, be made at the time and place to which it was so adjourned.

(d) Secured Party may apply all cash proceeds received, if any, from any sale or other disposition of the Collateral first to the reasonable expenses of retaking, holding, preparing for sale, selling, leasing and the like, to court costs and reasonable attorneys' fees, and

all legal, travel and other expenses incurred by Secured Party in attempting to enforce and/or collect the Obligations or in the prosecution or defense of any action or proceeding related to the subject matter of this Security Agreement and then to the Obligations, and Grantor shall remain liable and pay Secured Party on demand any deficiency remaining, together with interest thereon at the Late Charge Rate. Any excess of cash or cash proceeds from a sale or other disposition of the Collateral held by Secured Party and remaining after payment in full of all the Obligations and all such costs and expenses, if any, shall be paid over to Grantor subject to any duty of Secured Party imposed by law to the holder of any subordinate Lien in the Collateral as may be known to Secured Party.

ARTICLE 7

NOTICES

Section 7.01. Notices. The provisions of the Funding Agreement governing the giving and receipt of notices and communications to and between the Parties by this reference shall be incorporated herein and made a part hereof as if fully set forth herein. Except as otherwise provided herein, all notices and communications to and between the Parties will be delivered, and shall be deemed received, in accordance with and as provided in the Funding Agreement.

ARTICLE 8

CLAIMS, JURISDICTION, IMMUNITIES, PROCESS, WAIVER OF TRIAL BY JURY

Section 8.01. Claims, Jurisdiction, Immunities, Process, Waiver of Trial by Jury. The provisions of the Funding Agreement governing claims, jurisdiction, immunities, process and waiver of trial by jury in connection with any action, proceeding or counterclaim brought by any of the Parties against the other on any matters whatsoever arising out of or in any way connected with the Funding Agreement, this Security Agreement, any of the other Transactional

Documents, the relationship of Secured Party and Grantor, Grantor's use and operation of the Equipment and/or any claim for injury or damages by this reference shall be incorporated herein and made a part hereof as if fully set forth herein.

ARTICLE 9

MISCELLANEOUS

Section 9.01. Amendments; Waivers. No amendment or waiver of any provision of this Security Agreement nor consent to any departure by Grantor herefrom, shall be effective unless the same shall be in writing and signed by Grantor and Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.02. Expenses, Etc. Grantor shall reimburse Secured Party on demand for all costs, expenses, and charges (including without limitation, fees and charges of legal counsel for Secured Party) incurred by Secured Party in connection with the enforcement of this Security Agreement. The obligations of Grantor under this Section shall survive the payment in full of the Obligations and termination of this Security Agreement.

Section 9.03. Successors and Assigns; Transfer of Rights. This Security Agreement shall be binding upon Grantor and any of its successors, assigns and transferees as may be permitted by Secured Party and shall inure to the benefit of Secured Party, its successors and assigns. None of the rights or obligations of Grantor hereunder may be assigned or otherwise transferred without the prior written consent of Secured Party. Secured Party may assign all or any part of the Obligations to any entity, in which event, upon notice by Secured Party to Grantor, the assignee shall have, to the extent of such assignment (unless otherwise provided therein), the same rights and benefits with respect to the Collateral as it would have if it were Secured Party hereunder. Secured Party may furnish any information in the possession of

Secured Party concerning Grantor or the Collateral to any assignee or prospective assignees.

Section 9.04. Captions. The captions and headings hereunder are for convenience only and shall not affect the interpretation or construction of this Security Agreement.

Section 9.05. Severability. The provisions of this Security Agreement are intended to be severable. If for any reason any provision of this Security Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 9.06. Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Security Agreement by signing any such counterpart.

Section 9.07. Joint and Several Obligations. As used herein the term Grantor shall include all signatories hereto, if more than one. In such event, the obligations, representations and warranties of Grantor hereunder shall be joint and several.

Section 9.08. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to that State's principles of conflicts of law.

IN WITNESS WHEREOF, Grantor has caused this Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

[GRANTOR]

By: _____

Name:

Title:

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

On the ____ day of _____, 20__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE I

LIST OF EQUIPMENT

(SEPARATE ATTACHMENT)