

**OPENING STATEMENT  
BY  
VENETIA LANNON, SENIOR VICE PRESIDENT  
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
BEFORE THE NEW YORK CITY COUNCIL  
SUBCOMMITTEE ON LANDMARKS, PUBLIC SITING AND MARITIME USES**

**RE: MARITIME LEASE WITH SIMS MUNICIPAL RECYCLING OF NEW YORK, LLC  
"THE USE OF 30<sup>th</sup> STREET PIER AT THE SOUTH BROOKLYN MARINE TERMINAL  
FOR A MATERIALS RECOVERY FACILITY"**

**TUESDAY, May 20, 2008  
11:00 A.M.  
CITY HALL – COMMITTEE ROOM**

Good morning Chair Lappin and members of the Subcommittee on Landmarks, Public Siting and Maritime Uses. I am Venetia Lannon, Senior Vice President for Maritime at the New York City Economic Development Corporation ("EDC"). I am pleased to appear before you this morning to testify on the proposed maritime lease between the City of New York and Sims Municipal Recycling of New York, LLC ("Sims") for the 30<sup>th</sup> Street Pier at the South Brooklyn Marine Terminal in Sunset Park. I am joined from Sims by Robert Kelman, President of Commercial and Business Development, and Thomas Outerbridge, Manager of the Municipal Recycling Division. I would also like to acknowledge Robert Lange, the Director of the Recycling Bureau for the New York City Department of Sanitation ("DSNY") who will also be available later to answer your questions, and without whose vision and dedication to this project we would not be sitting here.

This is a momentous occasion for recycling in the City of New York as the maritime lease we bring today for your consideration supports a long-term contract for the acceptance, processing and marketing of all of the metal, glass, plastic and a portion of the mixed paper that DSNY collects through its curbside program. A critical component of the 20-year Solid Waste Management Plan that the Administration and Council came together to pass in the Summer of 2006, this lease and contract represent the long-term commitment to recycling that will finally put a program that has had a rocky history in New York City on solid ground.

A long-term deal will allow Sims to invest in the state-of-the-art sorting equipment that is needed to maximize recovery of the materials that our residents set out for recycling. Sims comes to municipal recycling from a long and successful history in the commercial scrap metal recycling industry; they don't own landfills and bring a determination with them to recover as much value as possible from material rather than burying it. We believe that this combination of investment and commitment will serve to stabilize the costs of the City's recycling program and serve as a base for the innovations that will help us raise our recovery rates.

This lease also perfectly complements EDC's current activities reactivating Brooklyn's working waterfront, bringing back piers into active maritime use, moving goods by barge instead of truck and creating jobs for the residents of Sunset Park and Red Hook. Let me briefly summarize the terms of the lease.

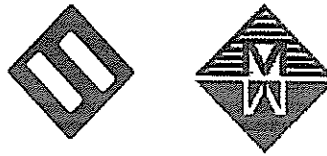
Since this is a maritime lease, there are certain provisions that ensure that Sims fully utilizes the property for a maritime dependent facility. In particular, the lease states that majority of material must arrive at the site by barge from Sims' other waterfront sites, as you will hear about shortly. This will mean that DSNY trucks will travel over 250,000 fewer vehicles miles on our City's streets each year -- a fact that earned the project a \$4.1 million dollar federal grant through the Congestion Mitigation Air

Quality program. The lease has received a negative declaration under CEQR from the Department of Small Business Services (“SBS”).

The term of the lease is 20 years, with two ten year renewal periods, which is coincident with the recycling contract that Sims will hold with DSNY. Sims is responsible for constructing and equipping the facility that they will build on the 30<sup>th</sup> pier and anticipates investing approximately \$50 million of its own funds into this effort. Sims will pay rent to EDC in the amount of \$1.00 per square foot for the nearly 540,000 square feet of the pier they will develop, which will escalate at three percent per annum. Through an EDC funding agreement, the City will provide Sims with the \$46,810,000 to accomplish the significant marine work -- including dredging, piling and decking -- that is required to bring this long-neglected pier back into productive maritime use.

The facility will employ between 75 and 100 full-time employees and Sims has an excellent track record as an employer in its current Bronx and Queens sites, with many employees staying with the firm for the long-term. Providing good-paying jobs at all different skill levels from equipment operators to facility managers, Sims has committed to hiring locally and to work with local community groups, elected officials and SBS to make good on this promise.

I would like to thank you for the opportunity to appear before the Subcommittee this morning and would particularly like to thank Councilmember Sara Gonzales, who has been a tough, but fair judge of this project and a great advocate for the concerns of her community. We feel confident that Sims will be a good partner for Sunset Park and a good employer of its residents. I will now turn the presentation over to Sims and would be happy to answer your questions at the completion of their testimony.



## **SIMS| Metal Management**

Testimony of Sims Metal Management  
before the  
New York City Council  
Subcommittee on Landmarks, Public Siting & Maritime Uses

Preconsidered L.U.: 30 Street Pier Lease

May 20, 2008

Good Morning Chair Lappin and members of the Subcommittee. Thank you for the opportunity to testify today regarding the 30<sup>th</sup> Street Pier Lease. My name is Bob Kelman. I am the President of Commercial & Business Development for Sims Metal Management ("Sims").

We are here today with the Administration to request the Subcommittee's approval for the Lease between Sims Municipal Recycling of New York LLC and the City for the 30<sup>th</sup> Street Pier at the South Brooklyn Marine Terminal (SBMT). The 30<sup>th</sup> Street Pier will be the location for a barge-served processing facility for NYC curbside recyclables. Recyclables will be received, processed and marketed by Sims under a Long Term 20-year Supply Contract with the NYC Department of Sanitation (DSNY).

Sims Metal Management is the largest scrap metal recycling company in the world, and the world's largest recycler of electronic waste. Since 2004, we have been the processor and marketer of all of New York City's curbside metal, glass and plastic (MGP) under a short term contract with DSNY.

In 2004, we were also selected by DSNY to negotiate the Long Term Contract, and in conjunction with the Department of Small Business Services and EDC, to receive space at the 30<sup>th</sup> Street Pier for construction and operation of a marine based processing facility under the Long Term Contract. The Long Term Contract will allow for investment in processing infrastructure to support the stability and growth of the City's curbside program. The 30<sup>th</sup> Street Pier will allow Sims to build on its existing network of marine-based facilities and expand the barged-serve infrastructure that supports the curbside recycling program.

Sims currently uses three facilities to handle the City's MGP under the short term contract. These are in the Bronx on the Bronx River, in Queens on Newtown Creek, and in Jersey City on the Claremont Channel.

The 30<sup>th</sup> Street Pier will serve as a fourth facility. Recyclables collected from certain Brooklyn Districts will be delivered directly to the Pier in DSNY collection trucks. The majority of the material processed at the Pier will be delivered in barges, which will be loaded at the other Sims locations.

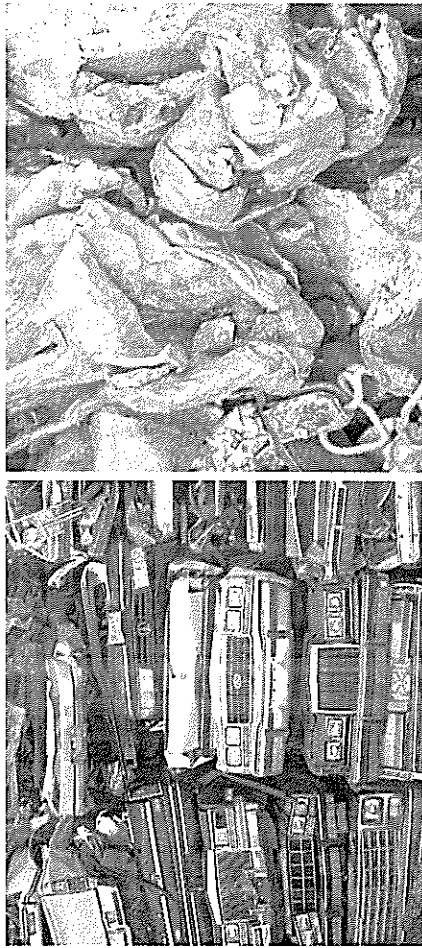
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Our company prides itself not just on what we do as a recycling company, but how we operate. Safety is always paramount at our facilities. We seek to be ahead of the curve in terms of environmental performance and regulation, with such things as low emission fuels and stormwater management. And we seek to be good neighbors and responsible members of the communities in which we operate.

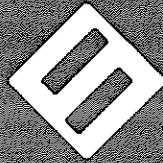
Since the City announced the selection of the SBMT site in 2004, we have had the chance to meet with many of the community organizations and elected officials, including Council Member Sara Gonzalez, of Sunset Park. We have heard the issues that are of greatest concern to the community, and we have made a number of commitments. These include: working with local employment services to recruit people who live in Sunset Park to work in the recycling facility; building and maintaining a visitor education center that will provide an opportunity for school children from across the City to learn about recycling; utilizing ultra-low sulfur diesel fuel in the mobile equipment we use on-site; supporting and participating in local off-site community and environmental projects that we identify in conjunction with the community; and establishing an advisory board of community stakeholders that can provide a regular forum for communication.

We appreciate your time and attention today, and are available to answer questions you may have.

Thank you.

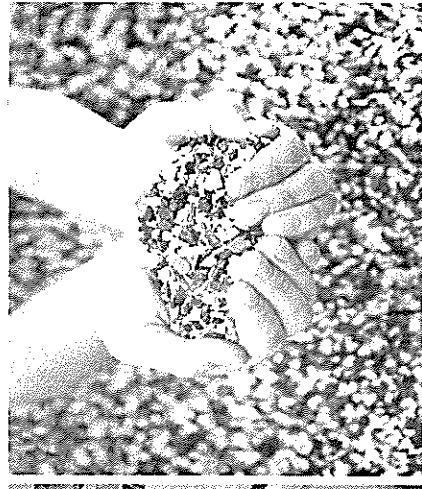
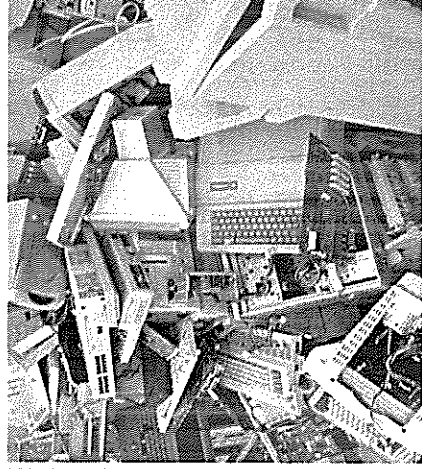


# New York City Long Term Recycling Contract



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building the world's leading recycling company . . .



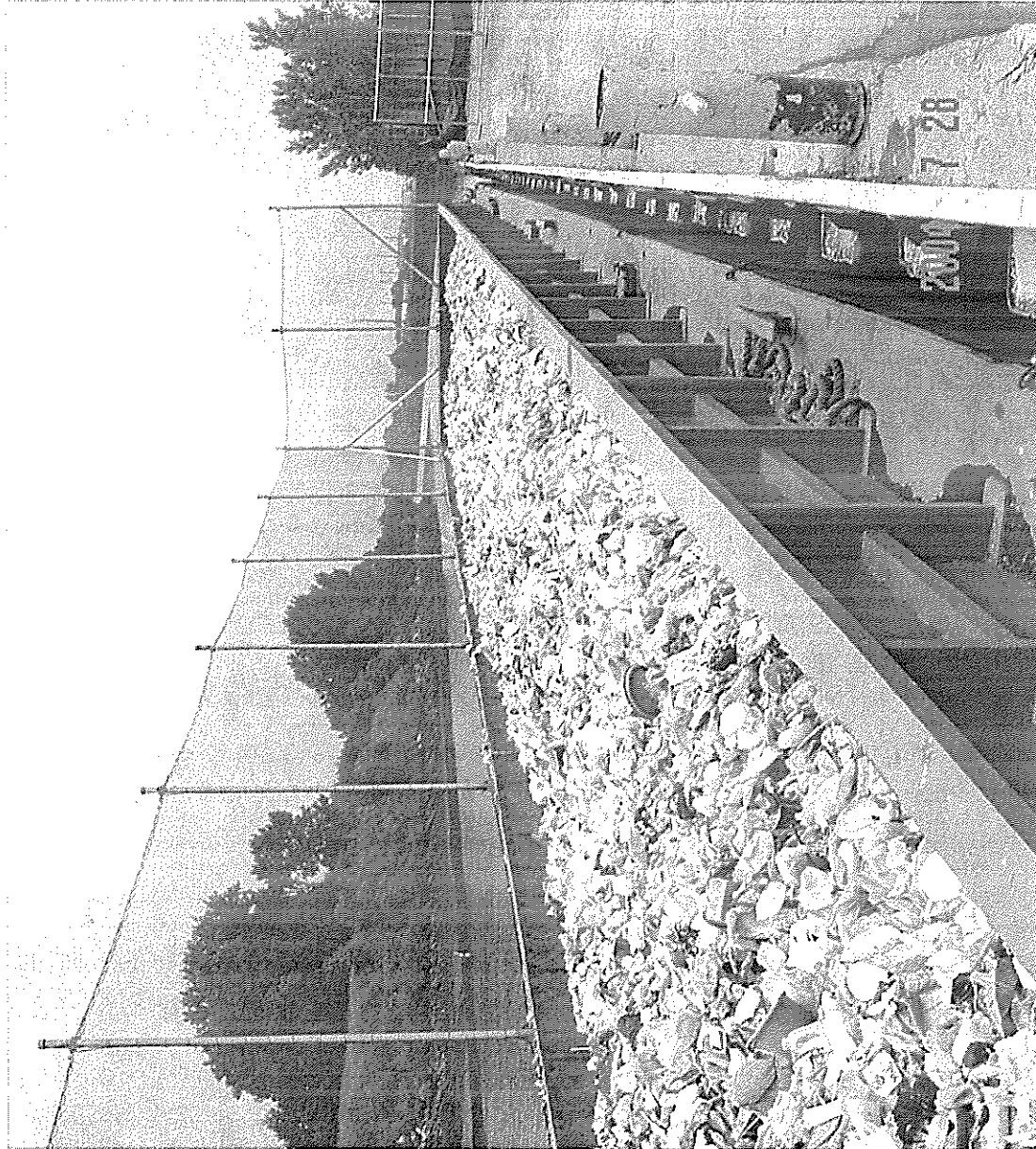
30<sup>th</sup> Street Pier Lease  
NYC City Council  
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May 20, 2008



SIMS GROUP

## Sims – NYC Partnership



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- Start April 2004

- **Pending Long Term Contract**

- MGP
  - Paper

- **Central SWMP Recycling Component**

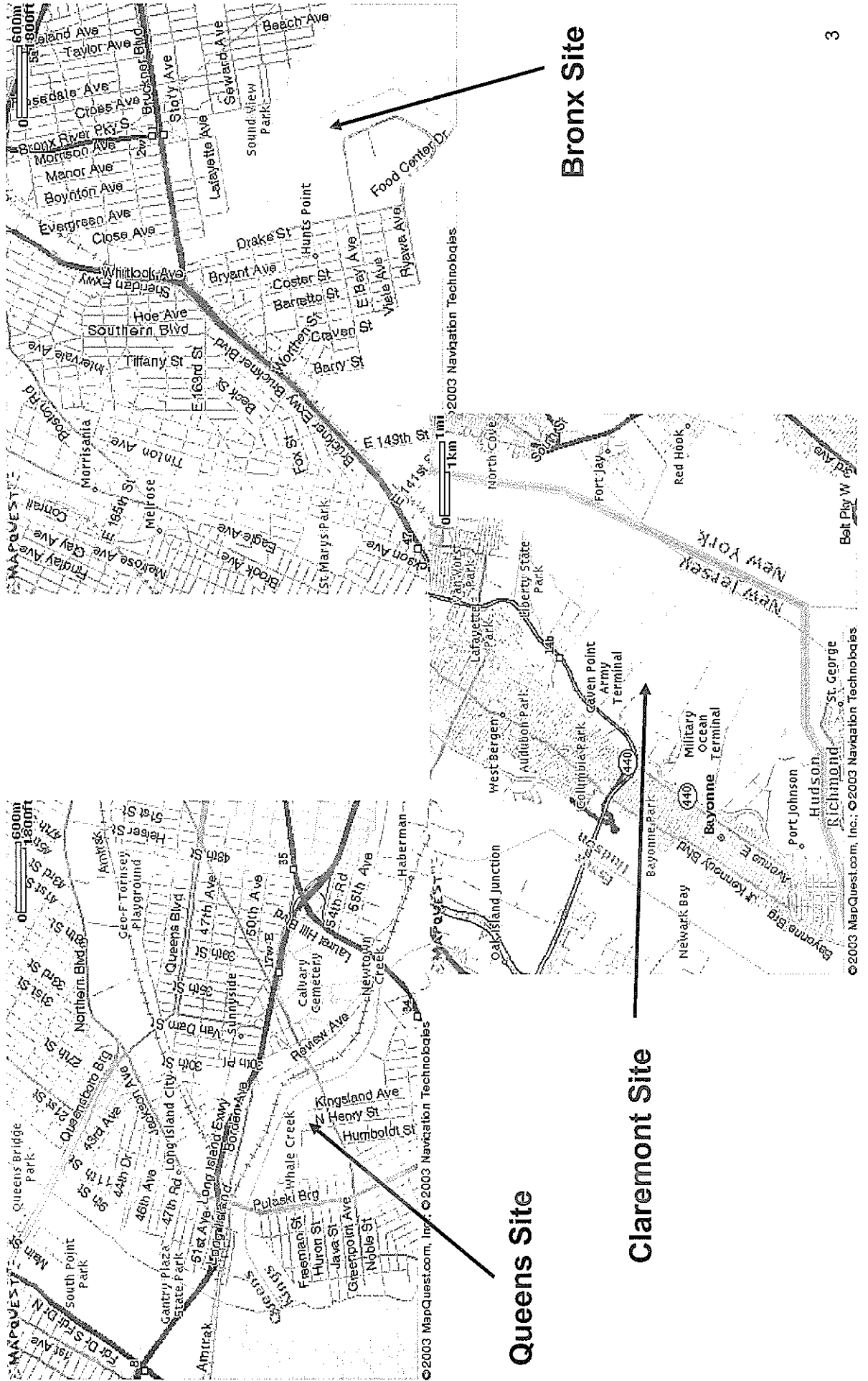
- **Support Curbside Recycling Stability and Growth**

- **Expansion of Marine-Based Recycling Infrastructure**



SIMS GROUP

# Current Sims MGP Facilities



**Queens Site**

**Claremont Site**

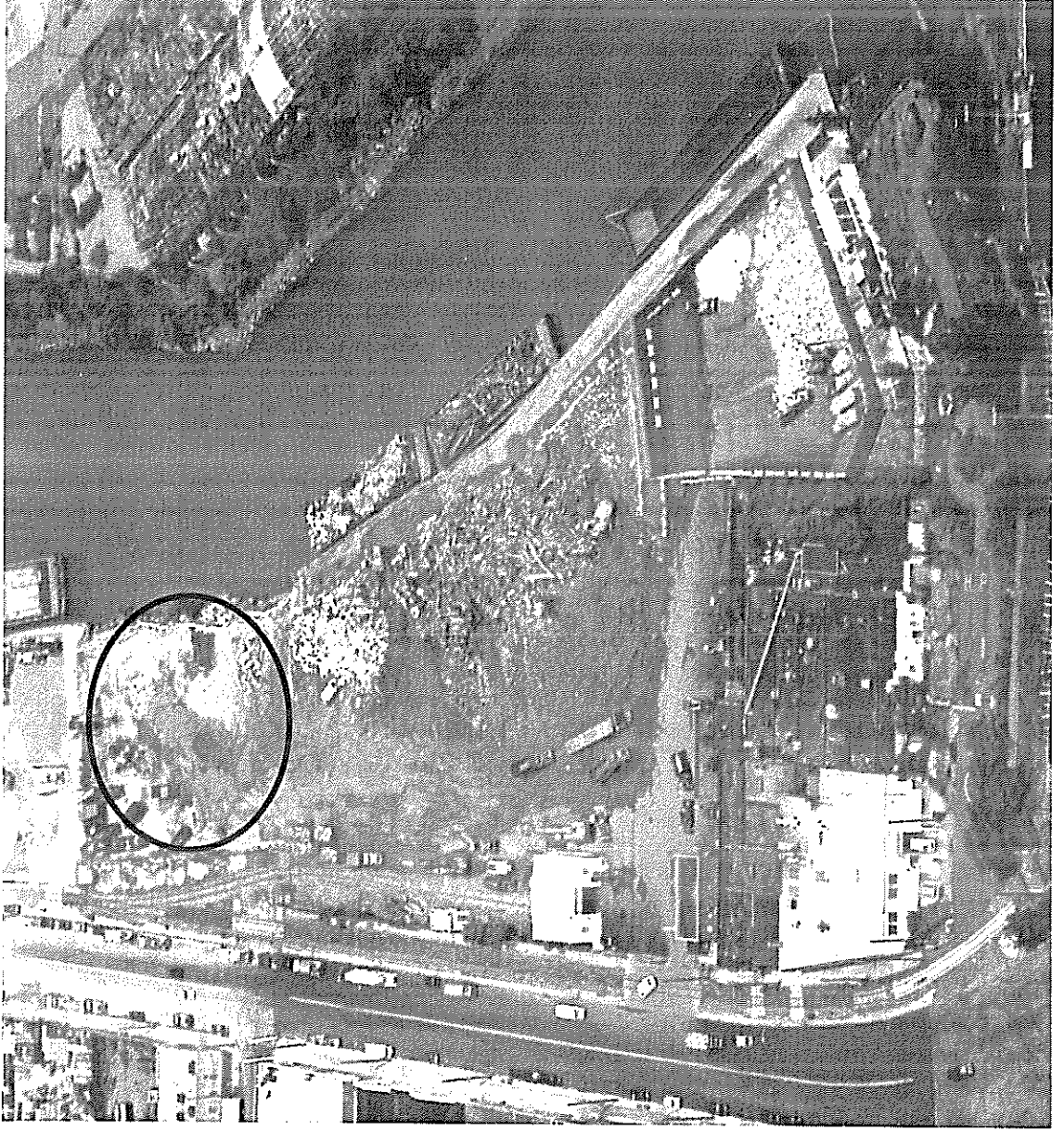
**Bronx Site**





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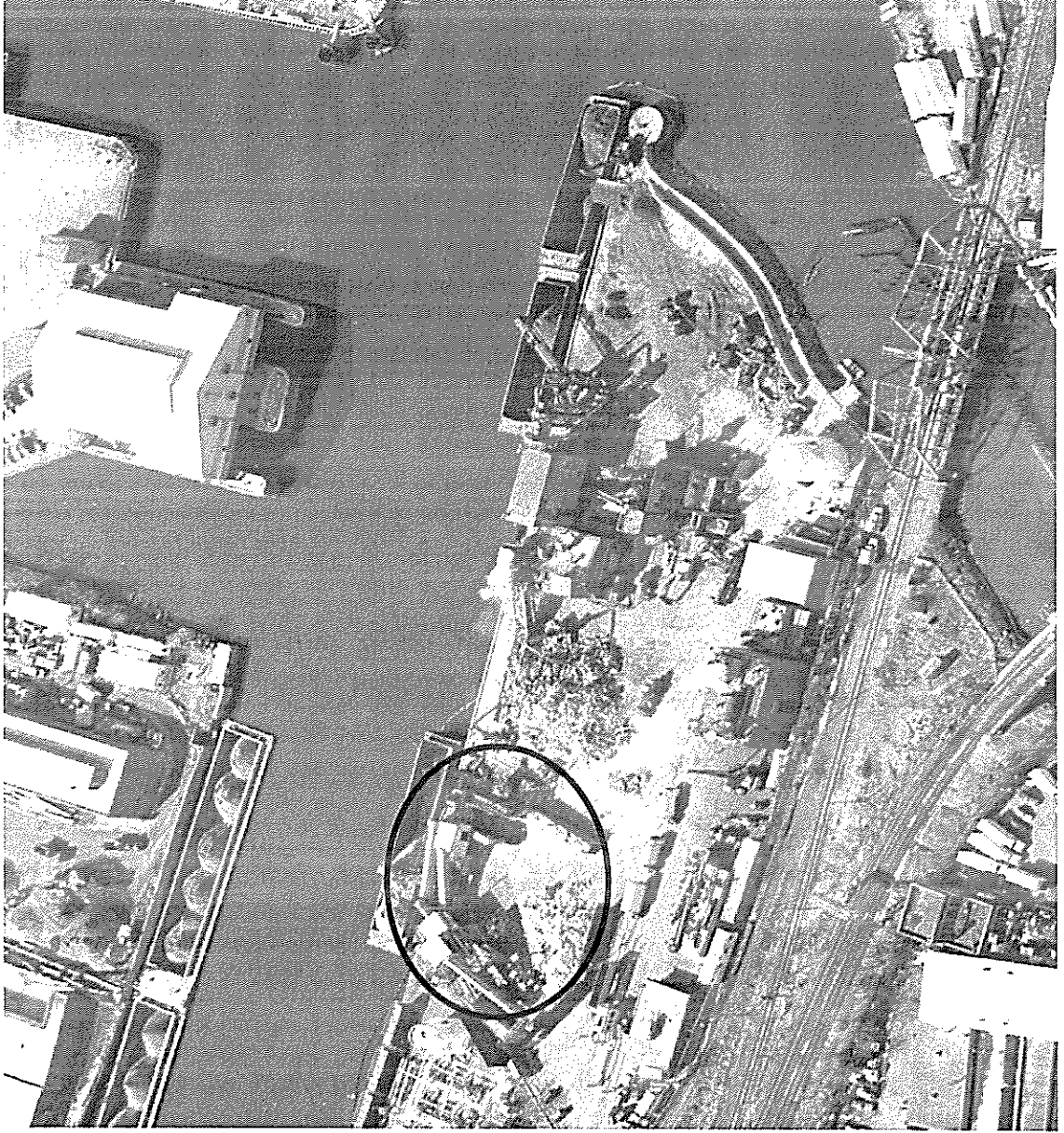
# Hunts Point, Bronx



- 5.5 Acres
- Zoned M2
- 630' Bulkhead
- Engineered Wetland for Stormwater Treatment
- Receives Approximately:
  - 220 tpd MGP
  - 30% of all MGP
  - 70 DSNY trucks/day
- Produces:
  - Bulk metal
  - MGP



# Long Island City, Queens

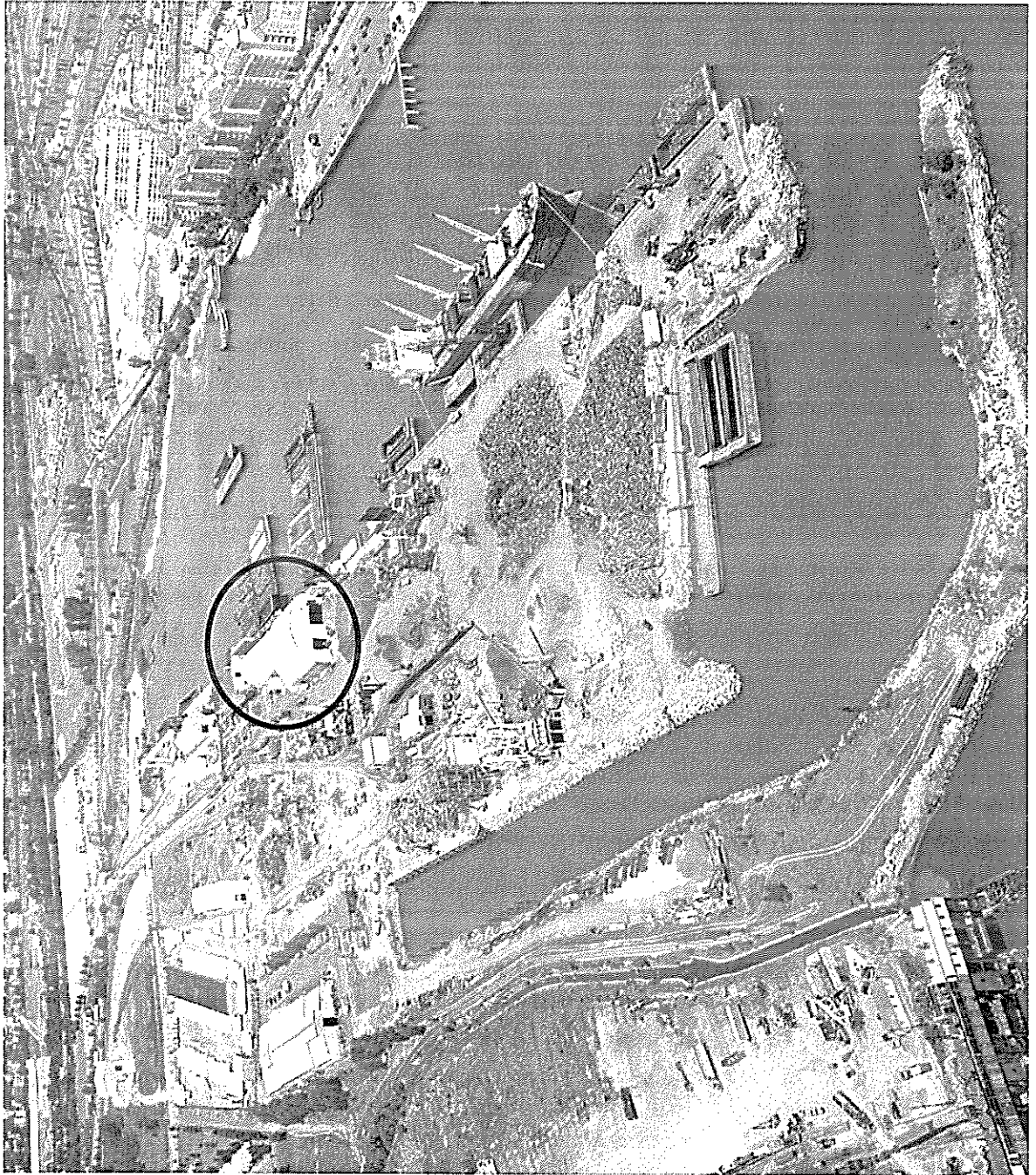


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- MGP Processing Produces:
  - Ferrous metal
  - Non-ferrous metal
  - Glass
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SIMS GROUP

## Claremont Terminal, Jersey City

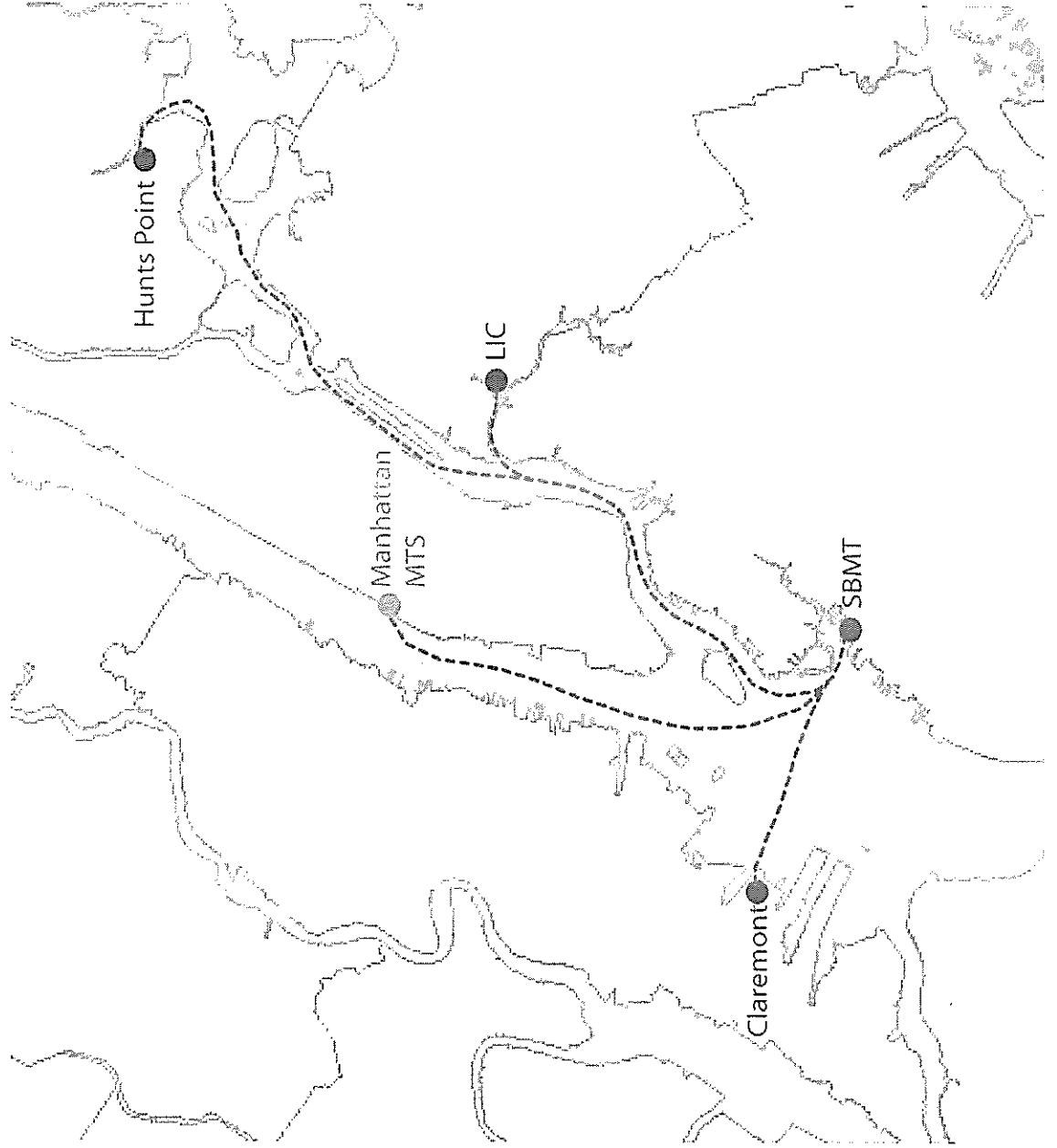


- 70+ Acres Upland
- 2,600' Bulkhead
- 1+ Mile Rail Siding
- 1.2 Millions Tons Scrap Steel/Year
- DSNY MGP Delivery:
  - 225 tpd MGP
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- Produces Sorted Plastics, Non-Ferrous and Ferrous Metals
- BX and QU MGP Delivery by Barge
- Mega Shredder for All NYC Bulky Metal
- Glass Plant for All NYC Glass



SIMS GROUP

# Long Term Infrastructure Plan



■ Marine-Based Intra-City Transport

■ Geographic Distribution of Tipping Locations

■ New Facilities:

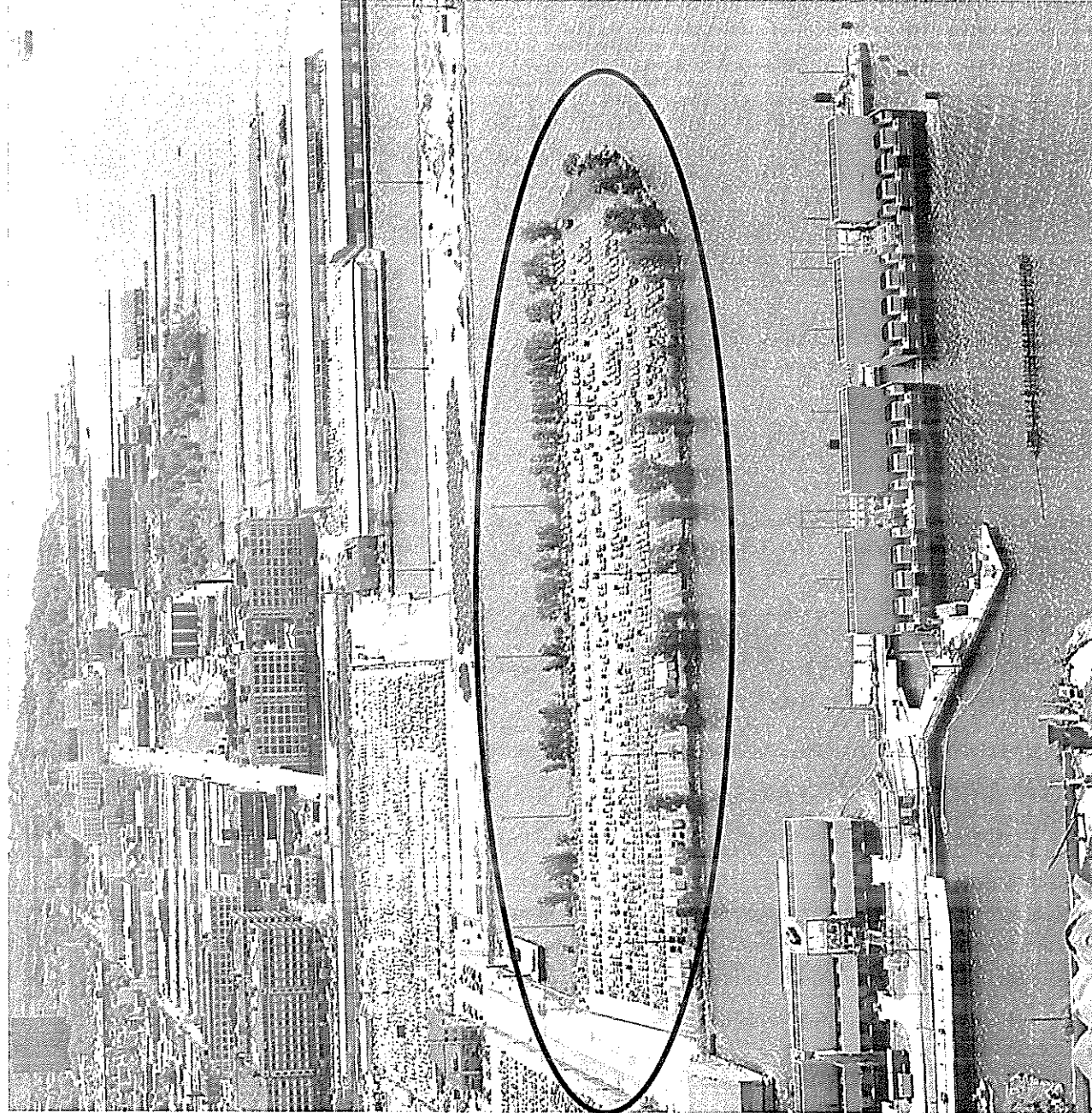
– MRF at the South Brooklyn Marine Terminal in Sunset Park

– DSNY MTS at Gansevoort



SIMS GROUP

## 29<sup>th</sup> Street Pier Looking South



### Pier Characteristics

- 11-Acre Solid-fill Pier
- Zoned M3; for Maritime Industrial Use
- Buffered from residents
- Potential Barge Access
- Potential Rail Access
- Good BQE Access



SIMS GROUP

## 29<sup>th</sup> Street Pier Looking Northwest



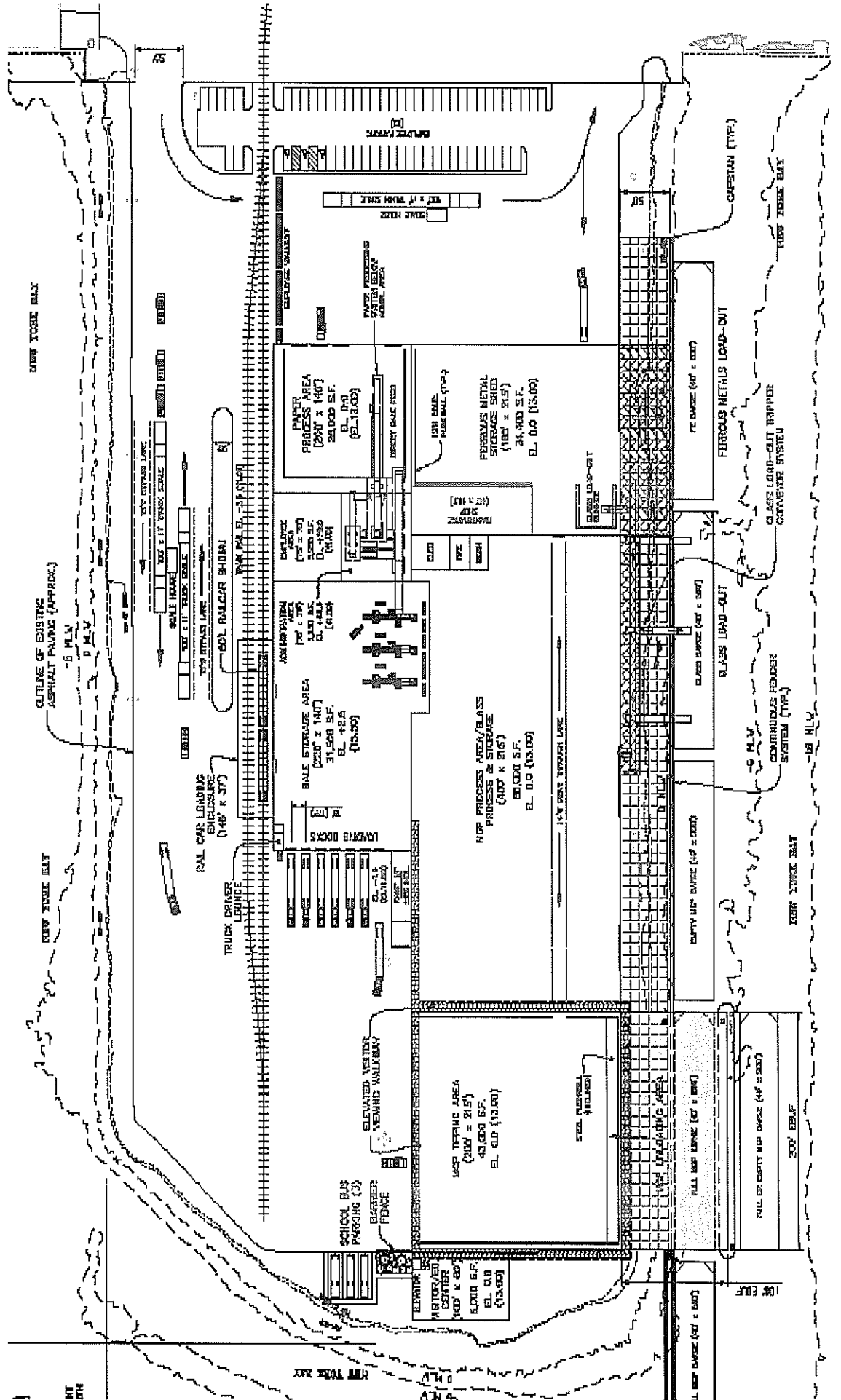
### Community & Environmental Commitments

- Establish Advisory Board of Stakeholders
- Recruit Sunset Park Residents for Employment
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- Participate in and Support Off-site Projects and Programs Identified with the Community



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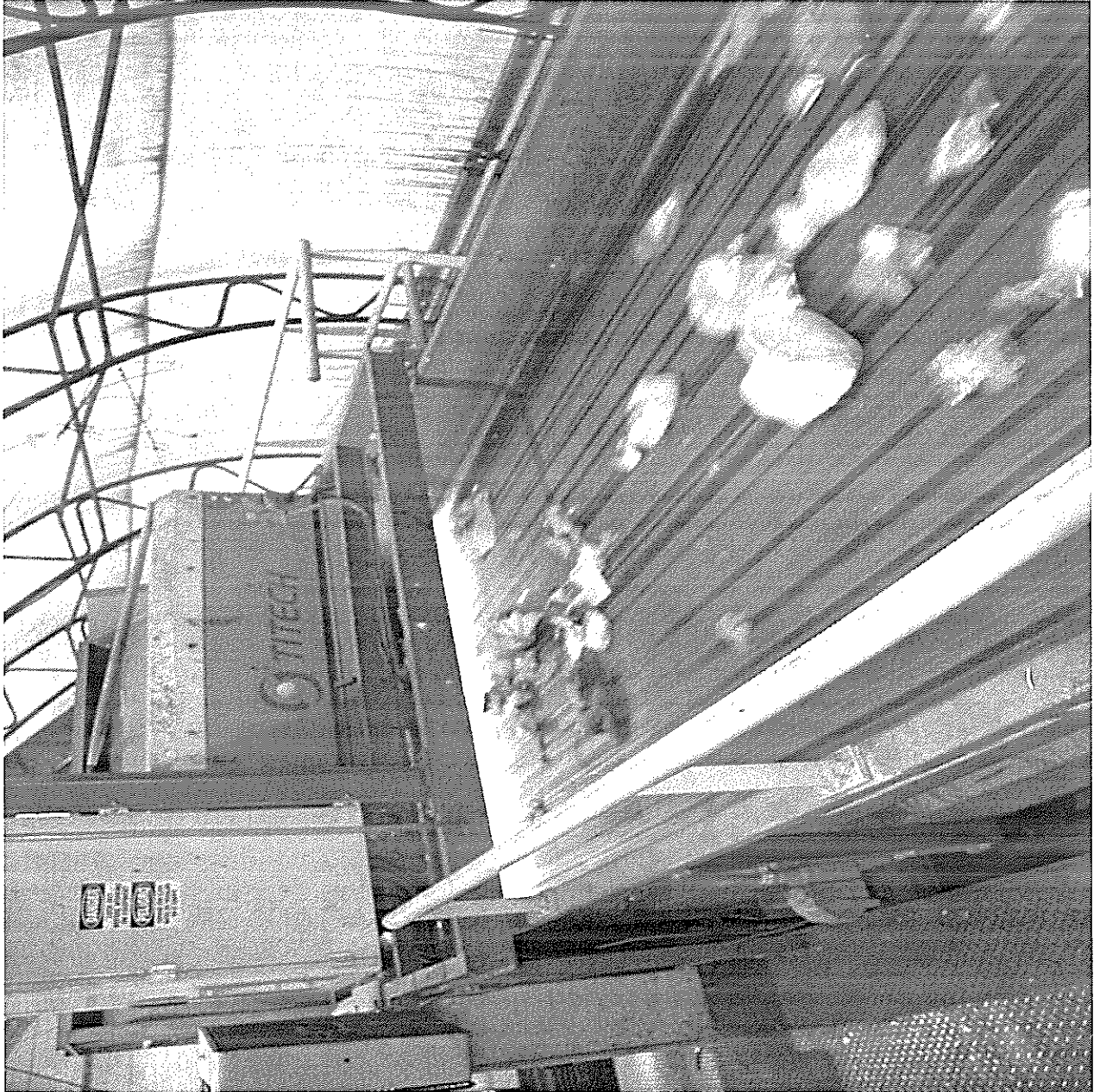
# Conceptual Site Plan





SIMS GROUP

# MGP Processing



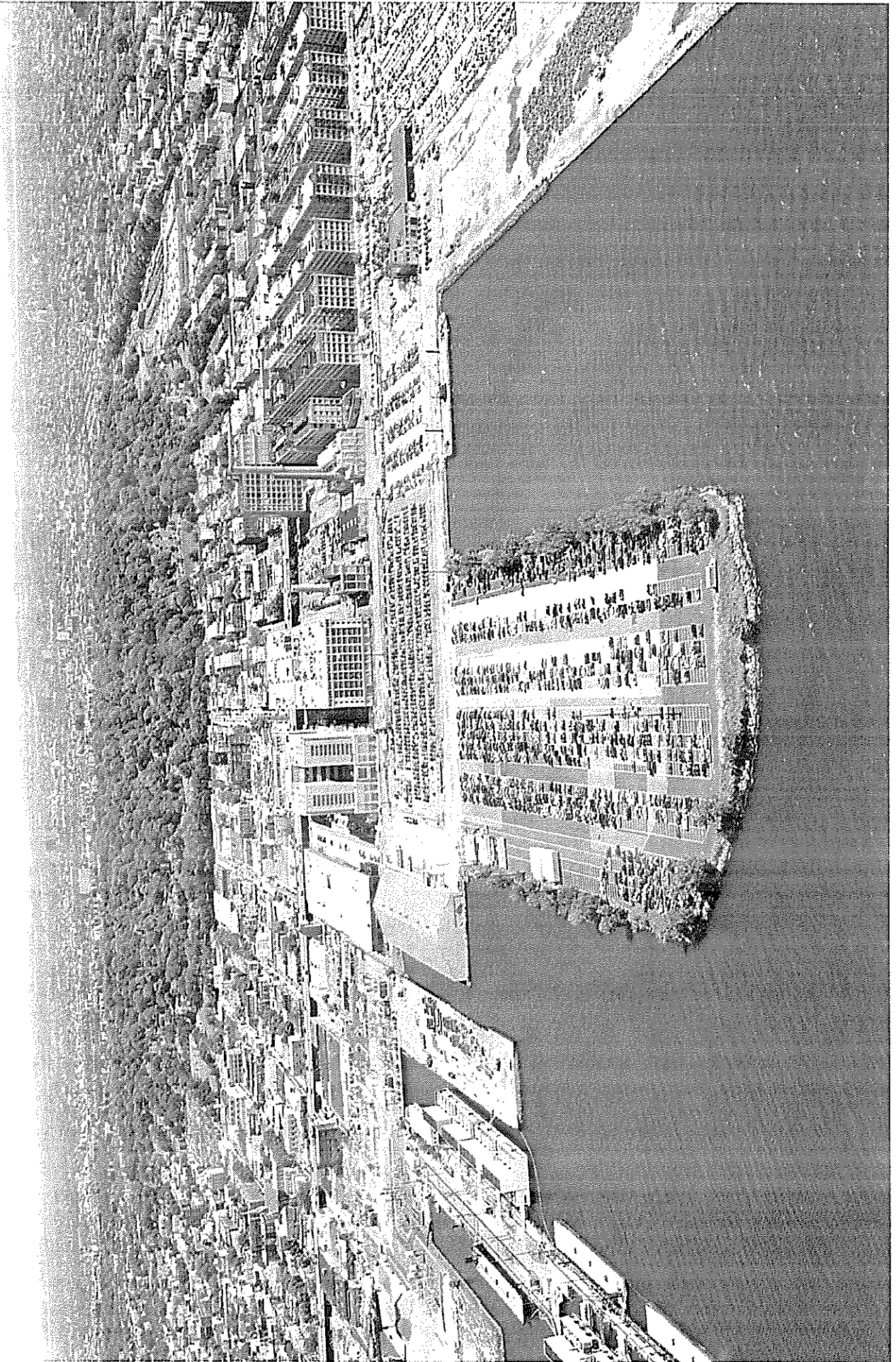
- Glass Separation with Screens
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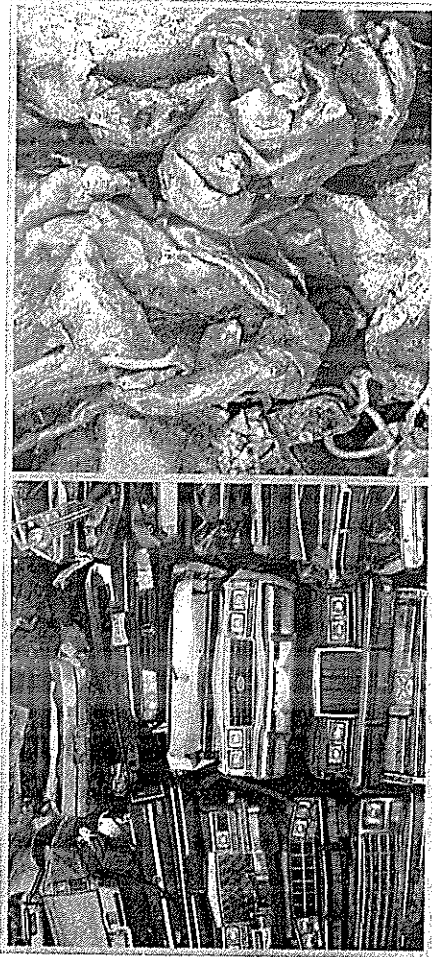
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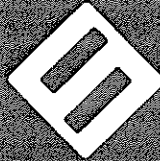
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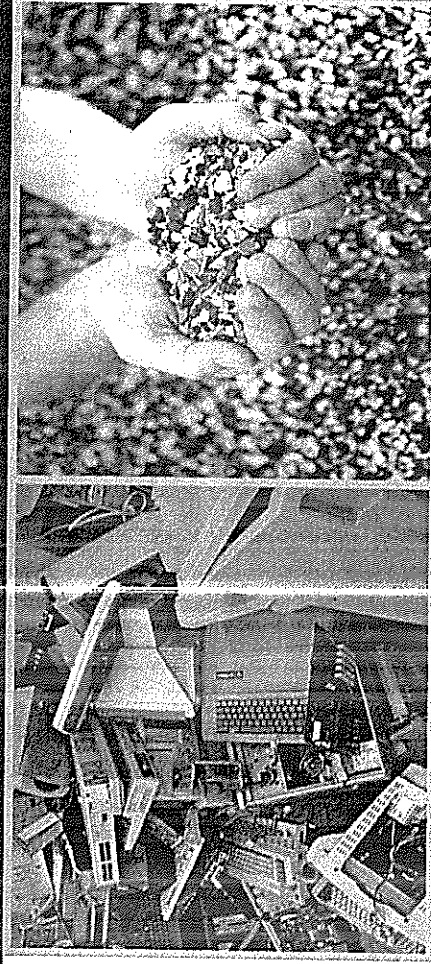


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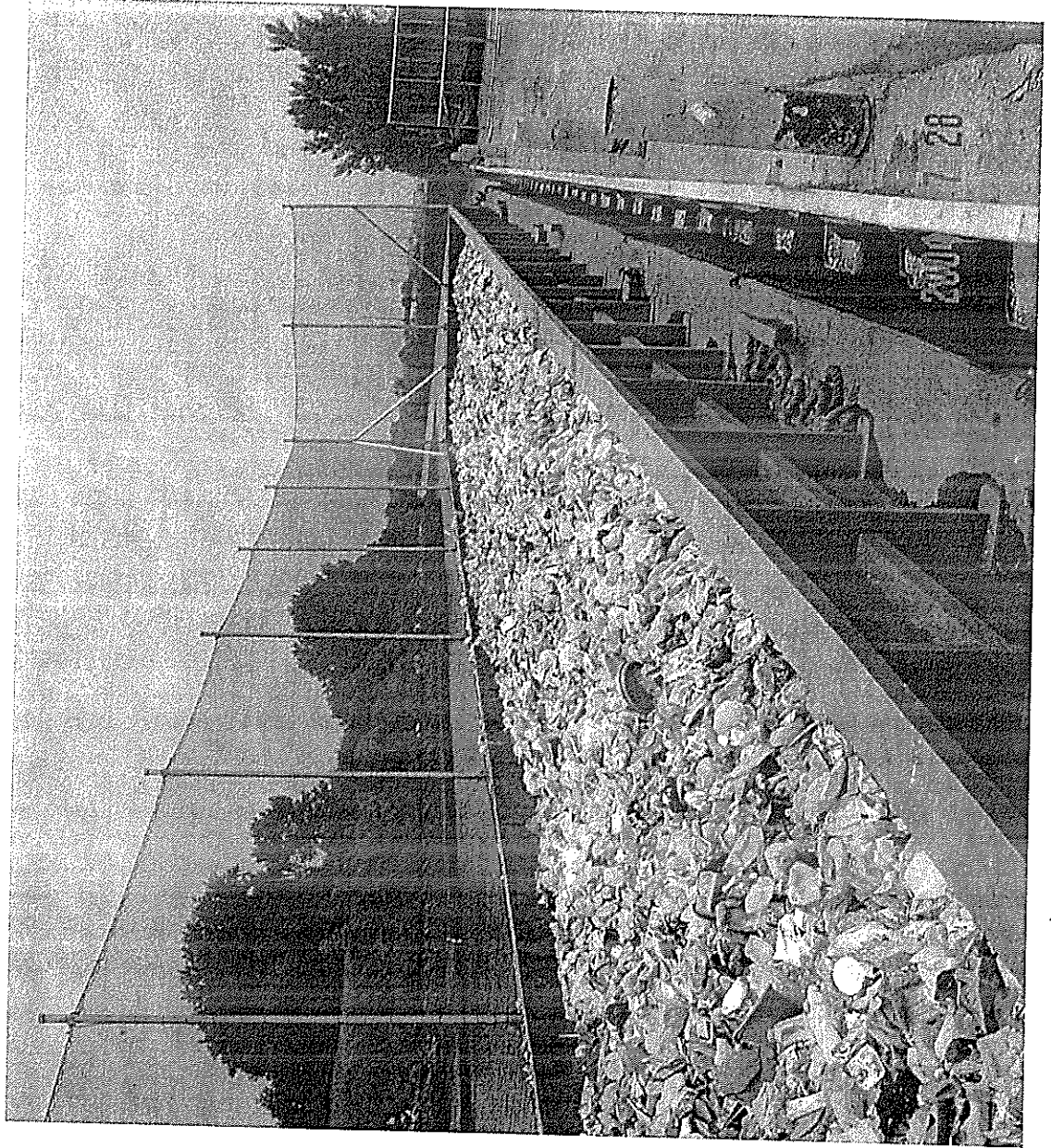
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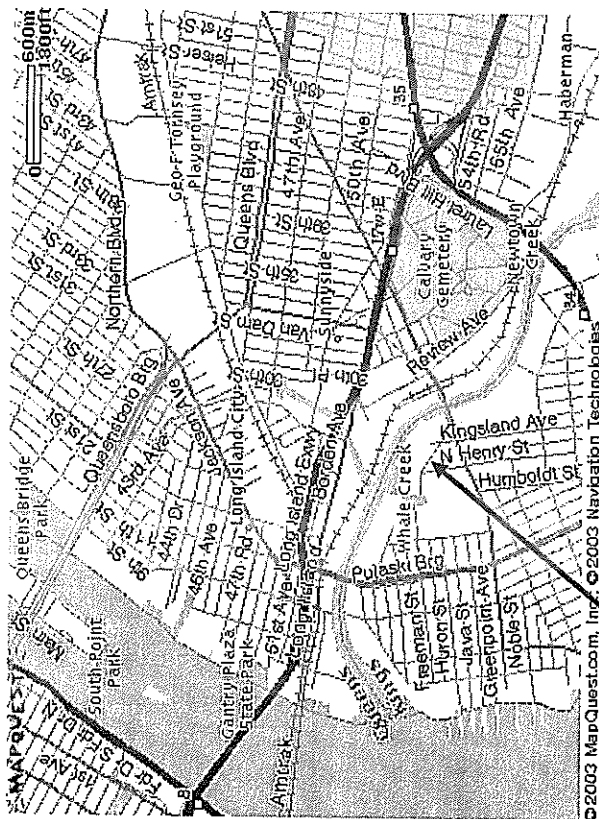
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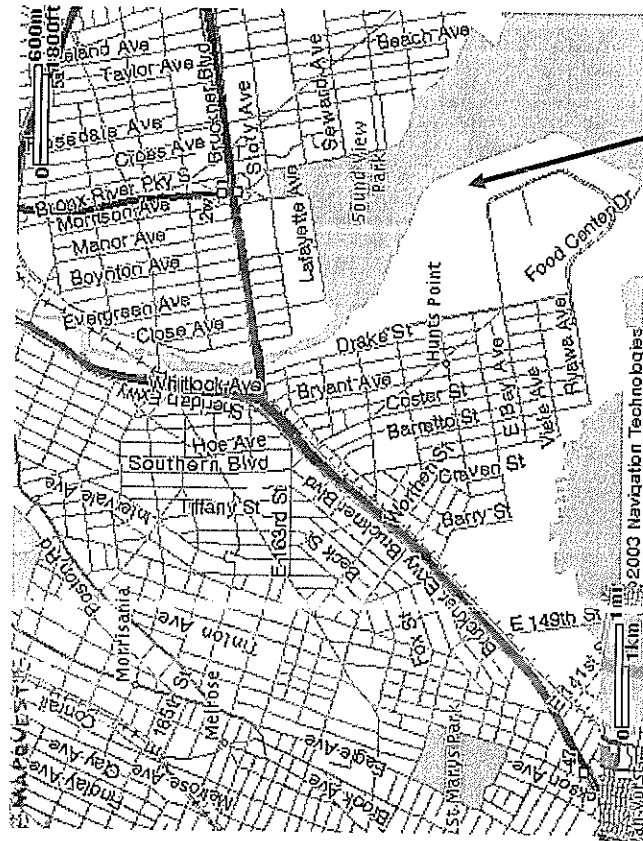


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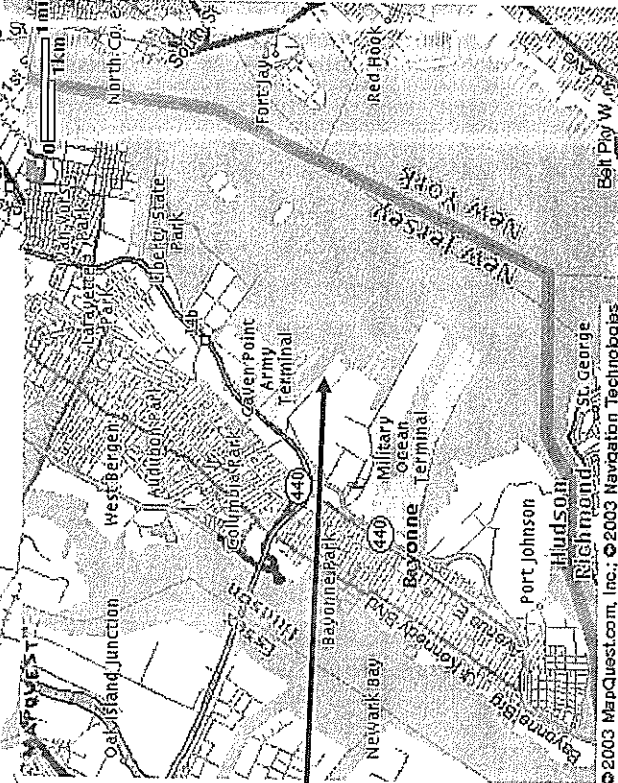
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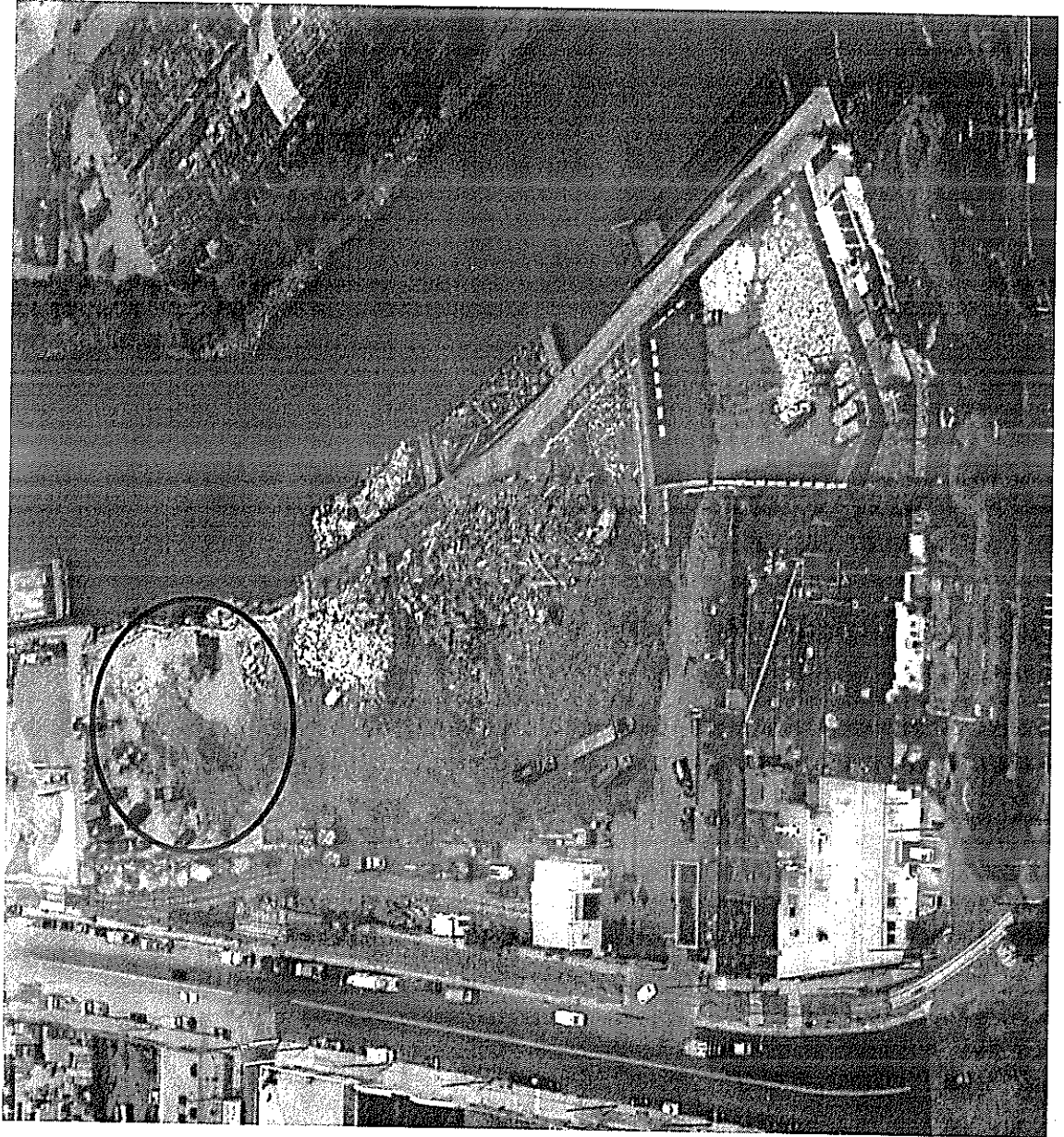


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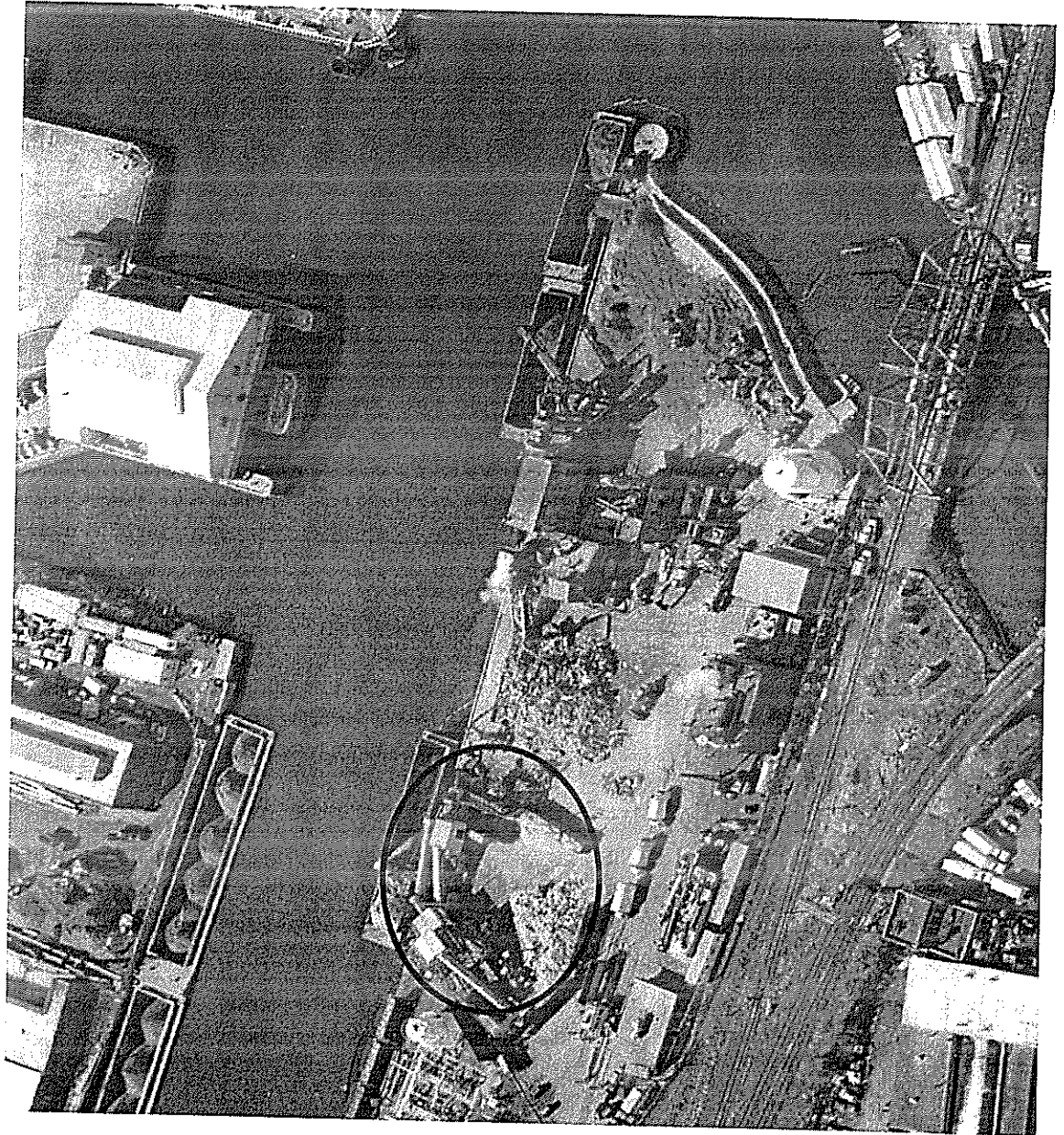


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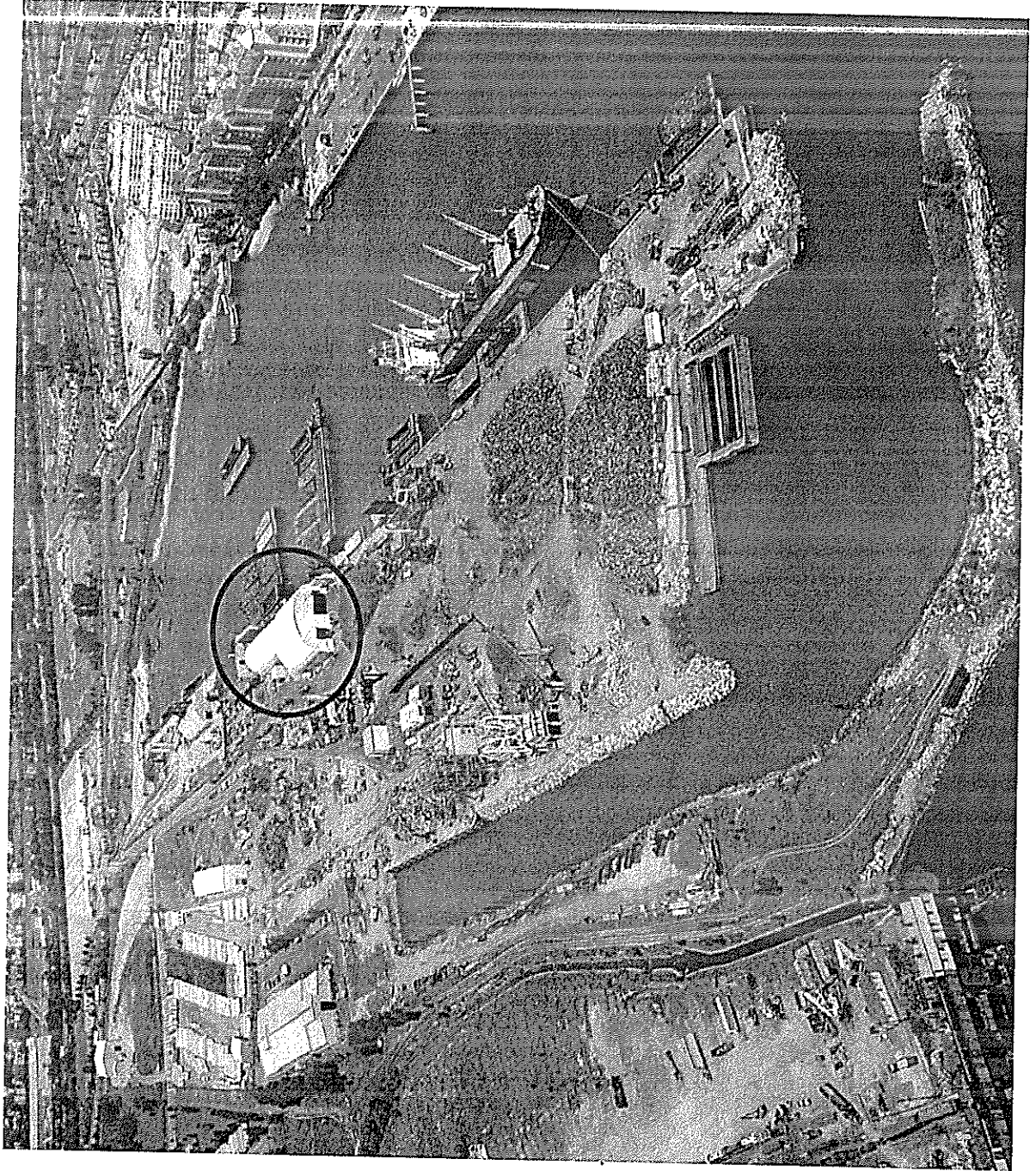


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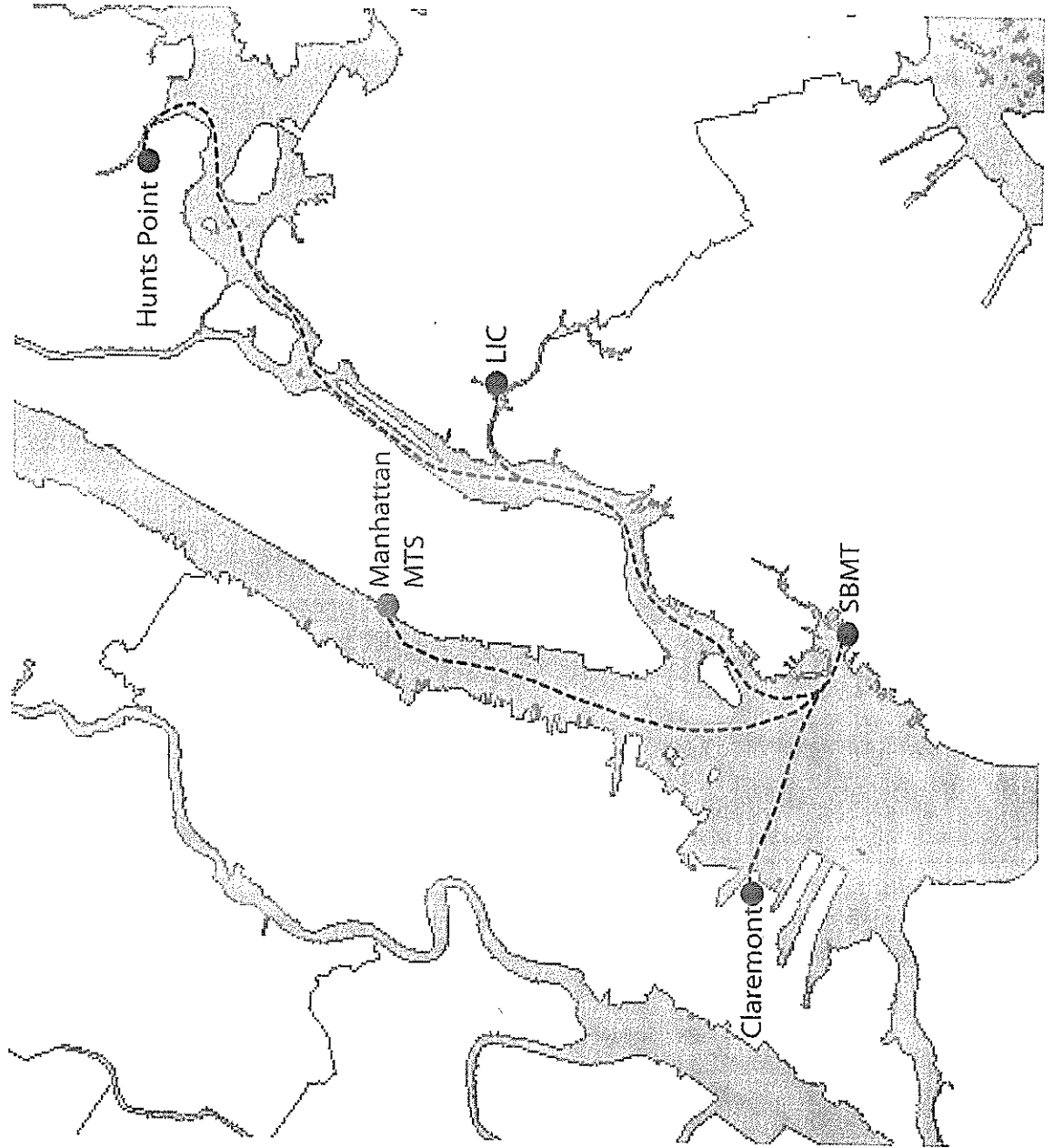


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SIVS GROUP

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■ Geographic Distribution of Tipping Locations

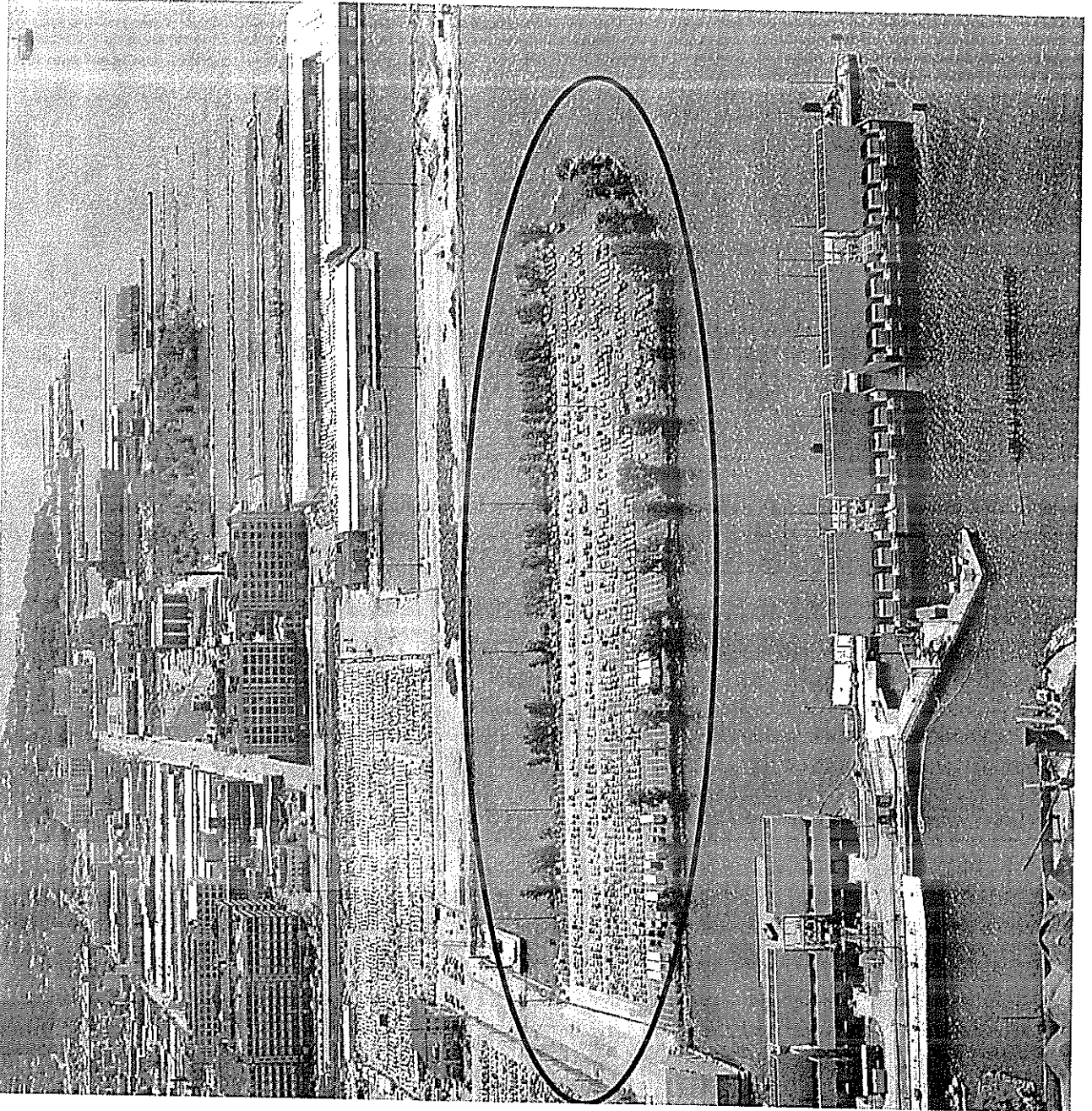
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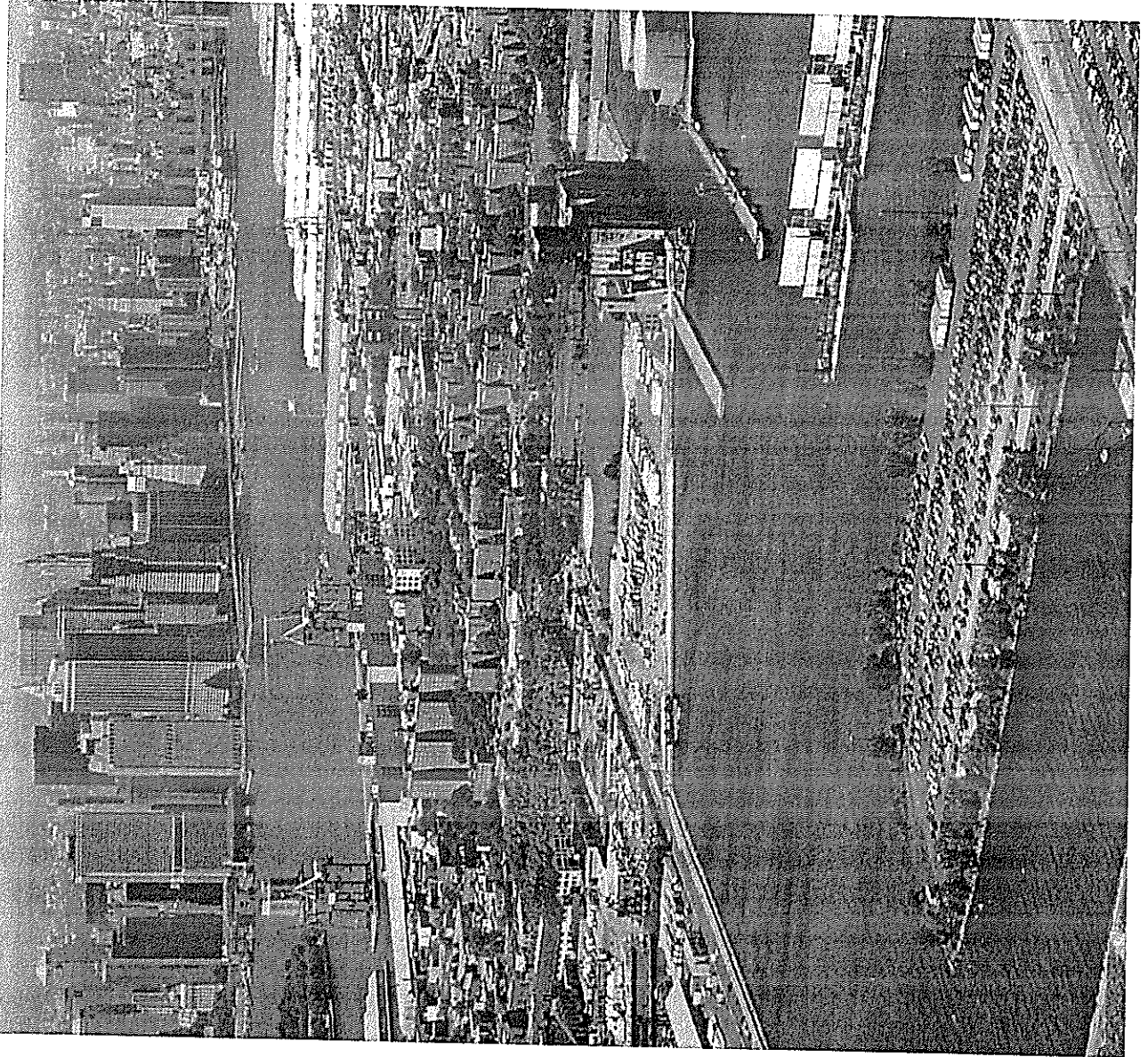
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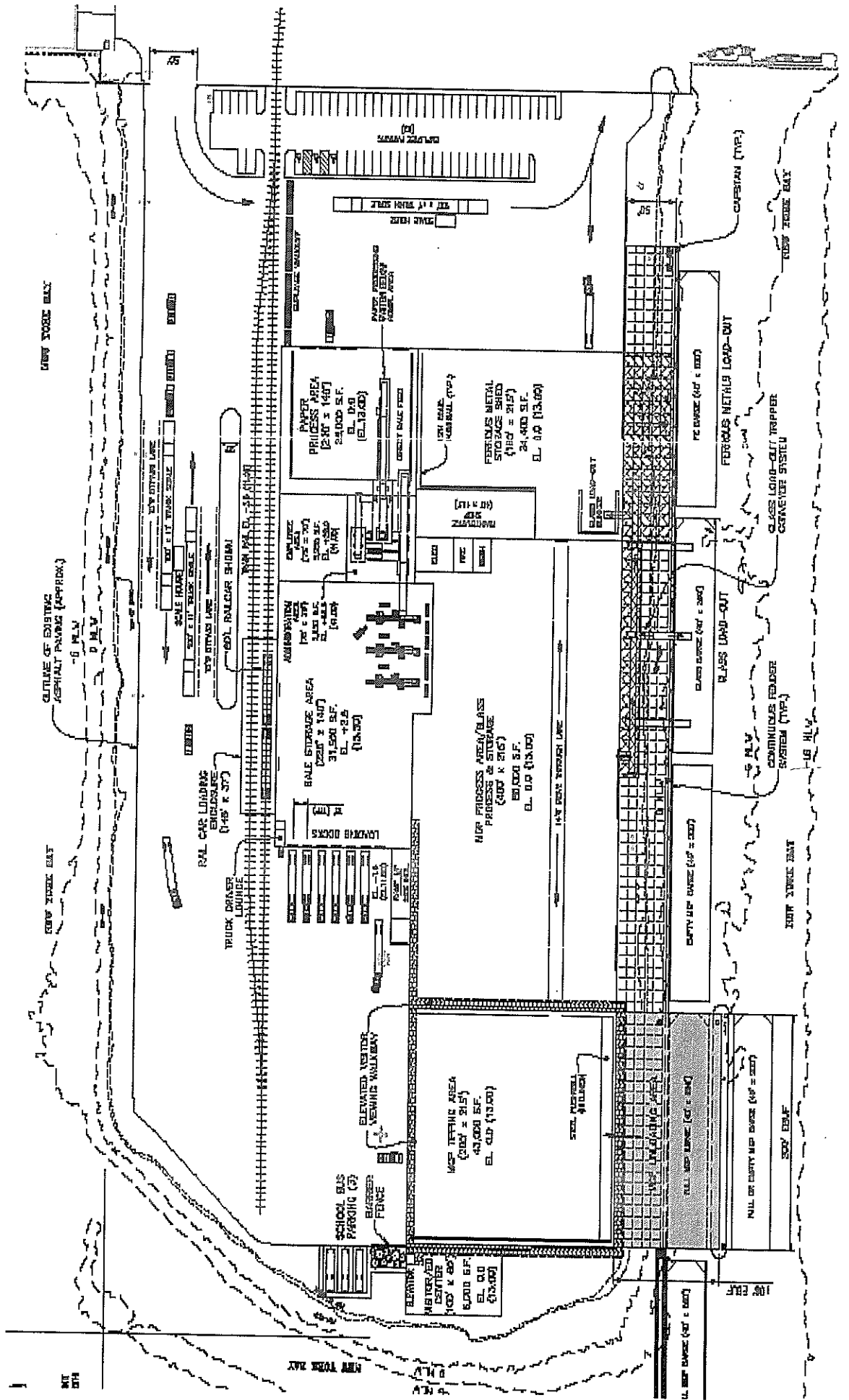
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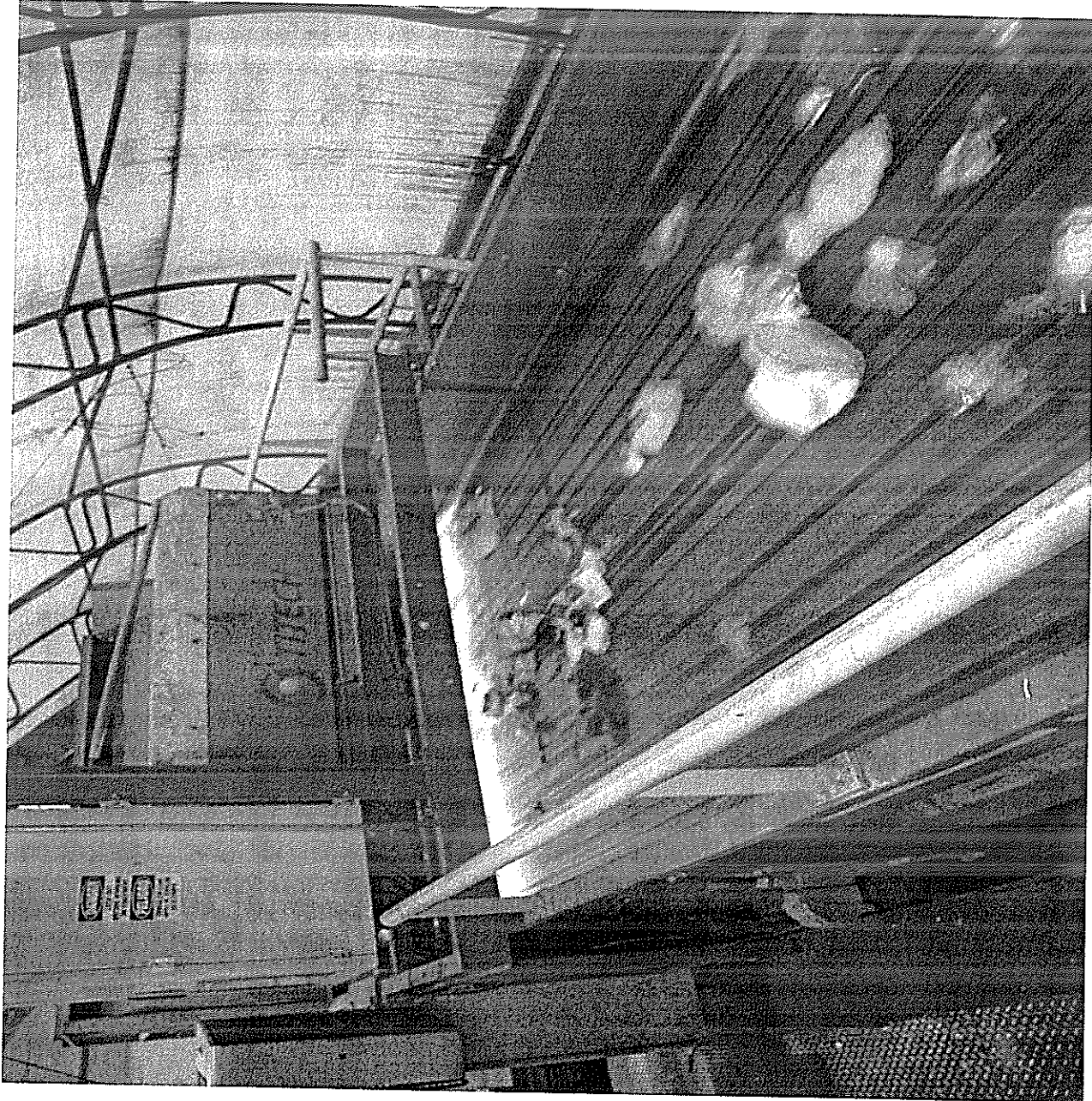
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# MGP Processing

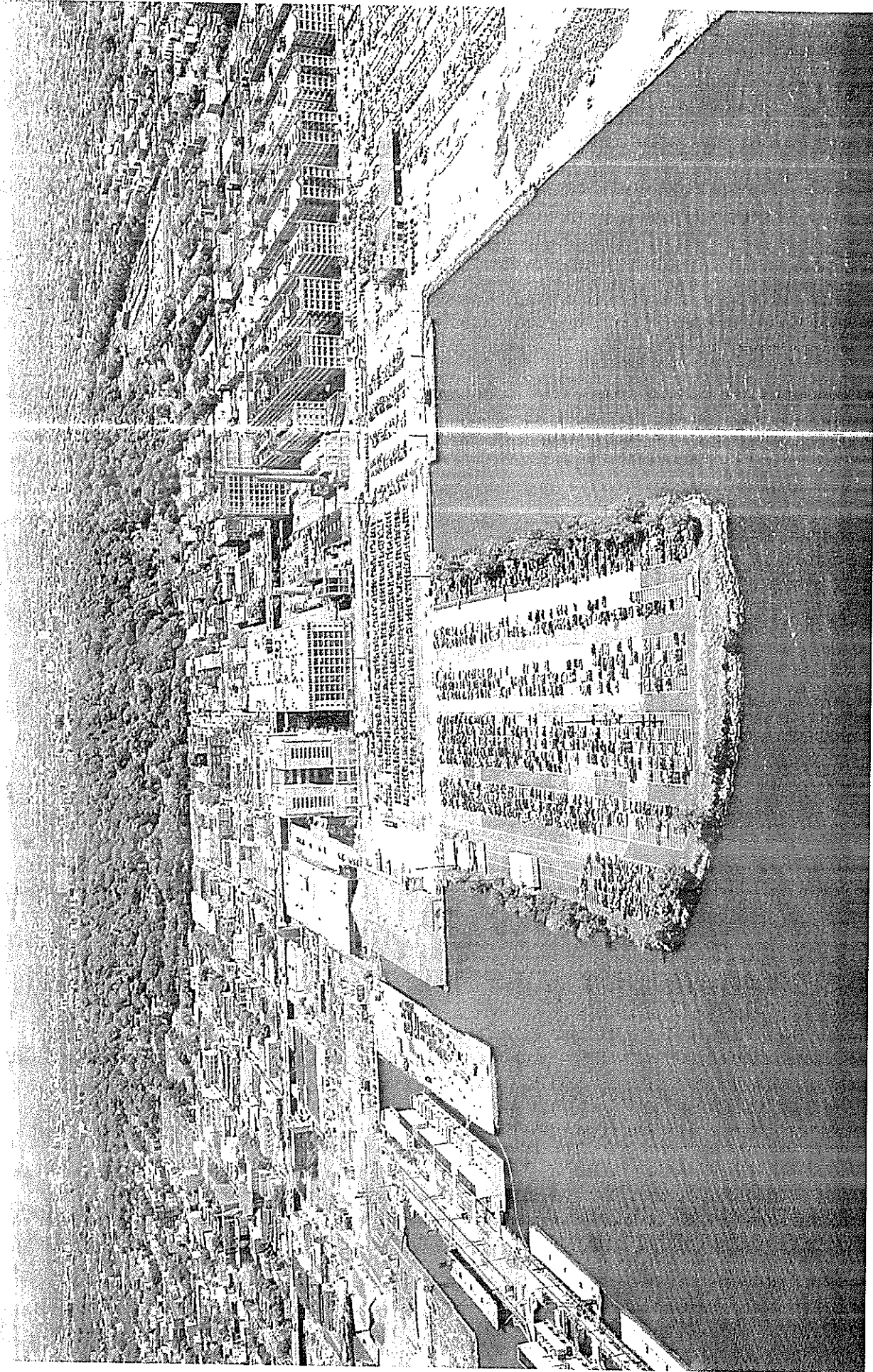


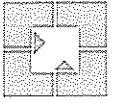
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CITY HALL – COMMITTEE ROOM**

Good morning Chair Lappin and members of the Subcommittee on Landmarks, Public Siting and Maritime Uses. I am Venetia Lannon, Senior Vice President for Maritime at the New York City Economic Development Corporation ("EDC"). I am pleased to appear before you this morning to testify on the proposed maritime lease between the City of New York and Sims Municipal Recycling of New York, LLC ("Sims") for the 30<sup>th</sup> Street Pier at the South Brooklyn Marine Terminal in Sunset Park. I am joined from Sims by Robert Kelman, President of Commercial and Business Development, and Thomas Outerbridge, Manager of the Municipal Recycling Division. I would also like to acknowledge Robert Lange, the Director of the Recycling Bureau for the New York City Department of Sanitation ("DSNY") who will also be available later to answer your questions, and without whose vision and dedication to this project we would not be sitting here.



This is a momentous occasion for recycling in the City of New York as the maritime lease we bring today for your consideration supports a long-term contract for the acceptance, processing and marketing of all of the metal, glass, plastic and a portion of the mixed paper that DSNY collects through its curbside program. A critical component of the 20-year Solid Waste Management Plan that the Administration and Council came together to pass in the Summer of 2006, this lease and contract represent the long-term commitment to recycling that will finally put a program that has had a rocky history in New York City on solid ground.

A long-term deal will allow Sims to invest in the state-of-the-art sorting equipment that is needed to maximize recovery of the materials that our residents set out for recycling. Sims comes to municipal recycling from a long and successful history in the commercial scrap metal recycling industry; they don't own landfills and bring a determination with them to recover as much value as possible from material rather than burying it. We believe that this combination of investment and commitment will serve to stabilize the costs of the City's recycling program and serve as a base for the innovations that will help us raise our recovery rates.

This lease also perfectly complements EDC's current activities reactivating Brooklyn's working waterfront, bringing back piers into active maritime use, moving goods by barge instead of truck and creating jobs for the residents of Sunset Park and Red Hook. Let me briefly summarize the terms of the lease.

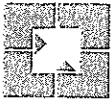
Since this is a maritime lease, there are certain provisions that ensure that Sims fully utilizes the property for a maritime dependent facility. In particular, the lease states that majority of material must arrive at the site by barge from Sims' other waterfront sites, as you will hear about shortly. This will mean that DSNY trucks will travel over 250,000 fewer vehicles miles on our City's streets each year -- a fact that earned the project a \$4.1 million dollar federal grant through the Congestion Mitigation Air

Quality program. The lease has received a negative declaration under CEQR from the Department of Small Business Services (“SBS”).

The term of the lease is 20 years, with two ten year renewal periods, which is coincident with the recycling contract that Sims will hold with DSNY. Sims is responsible for constructing and equipping the facility that they will build on the 30<sup>th</sup> pier and anticipates investing approximately \$50 million of its own funds into this effort. Sims will pay rent to EDC in the amount of \$1.00 per square foot for the nearly 540,000 square feet of the pier they will develop, which will escalate at three percent per annum. Through an EDC funding agreement, the City will provide Sims with the \$46,810,000 to accomplish the significant marine work -- including dredging, piling and decking -- that is required to bring this long-neglected pier back into productive maritime use.

The facility will employ between 75 and 100 full-time employees and Sims has an excellent track record as an employer in its current Bronx and Queens sites, with many employees staying with the firm for the long-term. Providing good-paying jobs at all different skill levels from equipment operators to facility managers, Sims has committed to hiring locally and to work with local community groups, elected officials and SBS to make good on this promise.

I would like to thank you for the opportunity to appear before the Subcommittee this morning and would particularly like to thank Councilmember Sara Gonzales, who has been a tough, but fair judge of this project and a great advocate for the concerns of her community. We feel confident that Sims will be a good partner for Sunset Park and a good employer of its residents. I will now turn the presentation over to Sims and would be happy to answer your questions at the completion of their testimony.



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President

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May 7, 2008

Hon. Christine C. Quinn  
Speaker of the Council of the City of New York  
City Hall  
New York, NY 10007

Re: Maritime Lease  
30<sup>th</sup> Street Pier  
South Brooklyn Marine Terminal  
Brooklyn

Dear Speaker Quinn:

Pursuant to Section 13.01.2(f) of the City Charter, the undersigned, on behalf of the Department of Small Business Services, submits for Council consideration the enclosed proposed lease (the "Lease") between the City, acting by its Commissioner of Small Business Services, as landlord, and Sims Municipal Recycling of New York LLC ("Sims") as tenant, with respect to property (the "Premises") known as the 30<sup>th</sup> Street Pier and adjacent land under water within the South Brooklyn Marine Terminal, Brooklyn.

The Lease arises in connection with a proposed long term contract (the "Recycling Contract") between the City's Department of Sanitation ("DSNY") and Sims for the acceptance, processing and marketing of recyclables. Such contract, an integral part of the City's implementation of its Solid Waste Management Plan (approved by the Council in July 2006), provides for Sims to receive and recycle all of the metal, glass and plastic and a portion of the commingled paper deriving from DSNY's curbside collections. The Premises is to accommodate a facility for receiving and processing (sorting, baling and otherwise preparing for shipment) the recyclable commodities. The Recycling Contract, intended to be entered into substantially contemporaneously with the Lease, derives, after lengthy and complex negotiations, from an RFP conducted by DSNY.

The principal terms of the Lease are generally as follows:

Tenant: Sims Municipal Recycling of New York LLC  
One Linden Avenue East  
Jersey City, NJ 07305

Such entity is a wholly owned subsidiary of Sims Group Limited, a publicly listed Australian company which is one of the world's largest metal recyclers.

Premises: Approximately 519,050 square feet of solid fill pier (including riprap) constituting the 30<sup>th</sup> Street Pier, plus approximately 415,000 square feet of water/land under water (partly exclusive) plus a non-exclusive access easement, all constituting p/o Lot 1, within Block 662, within the South Brooklyn Marine Terminal.

Term: Coincident with the Recycling Contract which, with renewal periods, has a maximum term of 40 years. The term commences upon site delivery and, unless earlier terminated, expires upon the expiration or earlier termination of the Recycling Contract.

Use: Premises must be used as a maritime dependent facility (the "Facility") including an acceptance facility and processing facility in connection with the Recycling Contract. The Facility must be the primary processing facility for materials delivered to Sims under the Recycling Contract. In addition, it may be used, subject to limited City approvals, by Sims for receipt, processing and shipment of recyclable material from commercial sources and as a scrap facility.

Rent: Rent is nominal during the construction of the Facility. Commencing upon the substantial completion of the Facility, rent will be at the rate of \$1.00 per square foot, times approximately 539,750 square feet, consisting of the areas within the Premises constituting usable pier uplands and the area over water and riprap to be decked or otherwise covered by the project improvements, as such \$1.00 has been escalated from the Lease commencement date in accordance with increases in the consumer price index, capped at 3% per annum, compounded. Such escalation will continue throughout the term of the Lease. In addition, with respect to any area within the Premises which is separately used for commercial or scrap operations, there will be an additional charge of \$1.75 per square foot of such area, as the same is escalated in accordance with the formula above.

Development: Sims must develop and equip the Facility substantially in accordance with a plan annexed to the Lease. The improvements will include significant marine work, including dredging, piling, decking and an EBUF (enclosed barge unloading facility) and other work, all of which (the "Site Work") will be funded by the City under an EDC funding agreement at a projected cost of \$46,810,000. Sims' current budget for constructing and equipping the remaining (non City funded) portions of the Facility is approximately \$50,000,000.

Visitor/Education Center: The Facility will include a visitor/education center designed to accommodate school and other groups and to provide an educational experience with respect to recycling. Sims will operate the center, which will have a capacity of handling two school groups at a time.

Landlord's Work: The City must perform certain utility construction work, and the environmental mitigation work required in connection with waterfront related permits.

Maintenance: With exceptions relating to paving, scales and certain maintenance dredging, the City must maintain the elements constituting the Site Work.

Events of Termination: The Lease enumerates certain potential events, some of which would be the City's fault, some Sims' fault and some no fault, based on which the planned development or operation of the Facility would be prevented or significantly delayed, such potential events being referred to as "Events of Termination." Upon the occurrence of any of such events, the Lease could be terminated, the development and/or operation of the Facility would cease, and, under the Recycling Contract, the parties would negotiate as to whether or not the Recycling Contract would continue in modified form without the Facility, and certain sums would be payable to Sims. Examples of Events of Termination are: material default by either party, a failure by the City to deliver the vacant Premises or a specified portion thereof on specified dates, or a failure to obtain certain required permits or similar regulatory matters.

Hazardous Materials: The City is generally responsible for hazardous materials on the Premises unless the same is attributable to Sims or its invited parties.

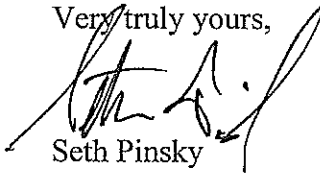
CEQR: The Lease has received a negative declaration under CEQR from the Department of Small Business Services.

Guaranty: Sims' obligations for an event of default under the Lease, along with those under the Recycling Contract, are to be guaranteed under a separate instrument (the "Guaranty") made by Simsmetal East LLC, an entity of which Sims is a wholly owned subsidiary, and further backed, in a limited capacity, by Sims Group USA Holdings Corporation. The limitation of liability under the Guaranty and the other documents in this overall transaction is \$65,000,000.

This is a maritime lease under Section 1301.2(f) of the City Charter. Accordingly, the Council has 45 days from the date of receipt in which to act on the Lease. If the Council fails to act on the Lease within the 45 days, then the Lease is deemed approved.

If you have any questions or concerns, please feel free to contact Venetia Lannon, Senior Vice President (212) 312-4229 or myself (212) 312- 3500. Thank you for your attention to this.

Very truly yours,



Seth Pinsky

cc: Honorable Melinda R. Katz  
Honorable Jessica S. Lappin  
Gail Benjamin, Director, City Council of New York Land Use Division  
Patrick Wehle, Deputy Director, Mayor's Office of City Legislative Affairs  
Paraag Sarva, Office of the Deputy Mayor for Operations  
Venetia Lannon, NYCEDC  
Doug Jones, NYCEDC

**AGREEMENT OF LEASE** (this "**Lease**") dated as of \_\_\_\_\_, 2008 by and between the CITY OF NEW YORK (the "**City**"), a municipal corporation of the State of New York, acting by its Commissioner of Small Business Services, having an office at 110 William Street, New York, NY 10038, as landlord, and SIMS MUNICIPAL RECYCLING OF NEW YORK LLC ("**Tenant**"), a Delaware limited liability company having an office at One Linden Avenue East, Jersey City, New Jersey 07305, as tenant (each of the above, a "**Party**"; collectively, the "**Parties**").

### RECITALS

1. The City is the owner of certain wharf property in the Borough of Brooklyn consisting of approximately 519,050 square feet of solid-fill pier identified as the 30<sup>th</sup> Street Pier, and approximately 415,000 square feet of adjacent land under water, such property being a portion of Lot 1 within Block 662 as shown on the Tax Map of said Borough, and being more particularly described and shown on the drawings attached as Exhibit A hereto (such real property, together with any and all structures and improvements located on or at such property and all other easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to such real property, the "**Premises**"). The square footage of the Premises remains subject to confirmation pursuant to the metes and bounds survey commissioned by Landlord, which survey shall be certified and delivered to both Landlord and Tenant. Upon acceptance of such survey by Landlord and Tenant, the metes and bounds description of the Premises contained in such survey shall become part of Exhibit A hereto; and Landlord and Tenant shall sign a letter agreement to so modify Exhibit A to this Lease. Landlord is also granting to Tenant easements for access and utilities, as set forth in Section 3.01(b) hereof.

2. The City and Tenant, simultaneously herewith, are entering into a long-term Contract for the Acceptance, Processing and Marketing of Recyclables, DSNY PIN #82703BR00071 (as the same may be amended from time to time, the "**Recycling Contract**").

3. In connection with the Recycling Contract, Tenant has undertaken to construct and operate at the Premises a maritime-dependent materials recovery facility, primarily for purposes of its operations under such contract.

4. In order to enable Tenant to effect the above, the City, as landlord, and Tenant, as tenant, are entering into this Lease.

### AGREEMENT

In consideration of the mutual promises made to each other, the City, as landlord, and Tenant, as tenant, agree to this Lease upon the terms, covenants, and conditions hereinafter set forth.

2008 MAY - 7 P 2:41

CITY COUNCIL  
LAND USE DIVISION

## ARTICLE 1

### DEFINITIONS; LEASE ADMINISTRATOR

**Section 1.01. Definitions.** As used in this Lease, the following terms shall have the following meanings (all terms defined in this **Article 1** or in other provisions of this Lease in the singular to have the same meanings when used in the plural and vice versa):

“Acceptance” means as provided in the Recycling Contract.

“Acceptance Facility” means the Acceptance Facility (as such term is defined in the Recycling Contract, but excluding the Processing Facility) to be operated at the Premises by Tenant.

“Administrative Code” means the Administrative Code of the City.

“Affiliate” has the meaning provided in the Recycling Contract.

“Alterations” has the meaning provided in Section 16.01(a).

“Annual Base Rent” has the meaning provided in Section 4.01.

“Apple” means Apple Industrial Development Corp, a not-for-profit corporation controlled by EDC.

“Approved Plans and Specifications” means as provided in Section 17.02.

“Architect” means Enviro-Services & Construction, Inc., dba RRT Design & Construction (“RRT”) or any registered architect, architectural firm, professional engineer or combined architectural/engineering practice licensed in the State of New York, selected by Tenant and reasonably approved by Landlord. The term includes Moffatt & Nichol, which may enter into a contract with RRT.

“Authorized Deliverer” has the meaning provided in the Recycling Contract.

“Base Index” means the Price Index for the calendar month that includes the Lease Commencement Date.

“Business Day” means any day other than a Saturday, Sunday, legal holiday, a day on which Landlord is closed for business, or a day on which banking institutions in New York City are authorized by law or executive order to close.

“Casualty” has the meaning provided in Section 12.02(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq.

“Charter” means the New York City Charter.



“City” means the City of New York, a municipal corporation of the State of New York, or the territory thereof.

“Commissioner” means the City’s Commissioner of Small Business Services or his or her jurisdictional successor, or the authorized representative of either.

“Comptroller” means the Comptroller of the City, or his or her designee.

“Condemnation Restoration” has the meaning provided in Section 13.01(d).

“Construction Contract” has the meaning provided in Section 17.14.

“Construction Rent Period” means as provided in Section 4.01(a)(i).

“Construction Work” means any construction or construction work performed by or on behalf of Tenant during the Term, including any Tenant’s Work, Alterations, Restoration, or other Improvement, or other construction work performed in connection with the use, maintenance or operation of the Premises, but excluding the Site Work (which shall be governed by the Funding Agreement).

“Date of Taking” has the meaning provided in Section 13.01(c).

“Default” means any condition or event, or failure of any condition or event to occur, which constitutes, or after the giving of notice or the lapse of time, or both, would constitute an Event of Default.

“Delivery of Possession Notice” has the meaning provided in Section 3.03(a).

“Director” has the meaning provided in Section 27.01.

“Division” has the meaning provided in Section 27.01.

“Division of Labor Services Agreement” has the meaning provided in Section 27.02(e).

“DSNY” means the City’s Department of Sanitation. For all purposes of this Lease, unless Tenant has received a notice to the contrary, DSNY shall act, and all communications with DSNY shall be through, DSNY’s Bureau of Waste Reduction, Reuse and Recycling. Notices to DSNY shall be as provided in Article 32.

“E.O. 50” has the meaning provided in Section 27.01.

“E.O. 50 Employment Report” has the meaning provided in Section 27.02(f).

“EDC” means New York City Economic Development Corporation, a local development corporation organized under Section 1411 of the Not-for-Profit Corporation Law.

“Effective Date” means as provided in Section 2.01.

“Environmental Study” means (i) Phase I Environmental Site Assessment Report, dated August 2002; (ii) Report of Phase II Environmental Assessment Site Assessment, dated September 2002; (iii) Supplemental Site Investigation Report, dated April 2004 and (iv) Phase II Soil Gas Survey and Surface Sampling, dated June 22, 2005, all prepared for EDC by TRC Environmental Corporation with respect to the South Brooklyn Marine Terminal.

“Equipment” means all personal property incorporated in or attached to and used in the operation of the Facility including, but not limited to, all machinery, equipment, motors, engines, heating, lighting, plumbing, ventilating, and air conditioning equipment, chutes, ducts, pipes, tanks, fittings, conduits and wiring, scales, separating, sorting, shredding, baling or other processing apparatus, hoists, communication installations and all additions or replacements thereof, and including spare parts for any of the above, but excluding (except with respect to spare parts as provided above) any rolling stock, detached office equipment (including computer equipment), furniture, vehicles, telephones and any other mobile machinery or equipment.

“Event of Default” means as provided in Section 29.01.

“Event of Termination” means as provided in Section 29.03.

“Expiration Dates” has the meaning provided in Section 3.03(a).

“Facility” means as provided in Section 9.01.

“Facility Completion Date” means as provided in Section 18.04(b).

“Facility Completion Deadline” means as provided in Section 18.04(c).

“Final Completion” has the meaning provided in Section 17.02.

“Full Delivery Outside Date” has the meaning provided in Section 3.02(a).

“Funding Agreement” means the Funding Agreement, dated as of the date hereof, between EDC and Tenant, as the same may be amended from time to time, and any other agreement(s) conferring public funding, under which EDC or the City agrees to provide funds to be applied to the construction and/or maintenance or repair of the Site Work.

“Governmental Authority” or “Authorities” means the United States of America, the State, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Premises, or any portion thereof, or any street, road, avenue, sidewalk or water comprising a part of, or immediately adjacent to, the Premises.

“Hazardous Substances” means as provided in the Recycling Contract.

“Indemnification Procedure” means as provided in the Recycling Contract.

“Imposition” or “Impositions” means:

- (a) real property general and special assessments, including any charges of a business improvement district or similar charge, other than Taxes;
- (b) personal property taxes;
- (c) occupancy and rent taxes;
- (d) water and sewer charges;
- (e) excises;
- (f) levies;
- (g) license and permit fees;
- (h) service charges with respect to police and fire protection, street and highway construction, maintenance and lighting, sanitation and water supply or any other service, and
- (i) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord's acts or omissions in its proprietary capacity only.

“Improvements” means any and all structures or other improvements and appurtenances of every kind and description erected on the Premises by Tenant or otherwise under this Lease, constructed or placed upon the Premises or any portion thereof by Tenant or otherwise under this Lease, and any and all alterations, replacements and substitutions thereof, including, but not limited to, the Tenant's Work, landscaping, and all Equipment incorporated in or attached to the Premises at any time during the Term, but excluding the Site Work (which shall be governed by the Funding Agreement).

“Indemnifying Party” has the meaning provided in Section 23.02.

“Indemnified Party” has the meaning provided in Section 23.02.

“Initial Term” means as provided in Section 3.03(a).

“Institutional Lender” means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a religious or educational institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, or any combination of the preceding; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to the jurisdiction of the courts of the State of New York in any actions pertaining to or arising in connection with this Lease, (b) have net assets of not less than \$300,000,000, or such lower amounts as are deemed acceptable in Landlord's sole discretion, and (c) not be a Prohibited Person.

“Invitees” means any of the following with respect to Landlord, DSNY or Tenant: such Person's respective subtenants, permittees, vendors, customers or invitees.

“Landlord” means the City of New York, acting by the Commissioner, in turn acting, for purposes of the administration of this Lease, through Lease Administrator, unless the Commissioner or Lease Administrator notifies Tenant to the contrary or the Commissioner directly exercises Landlord’s rights under this Lease. See Section 1.03.

“Landlord’s Work” means as provided in Article 7.

“Late Charge Rate” means the rate of interest charged at the time in question by the City for delinquent Taxes.

“Lease” means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof.

“Lease Administrator” means as provided in Section 1.03.

“Lease Commencement Date” means as provided in Section 3.03(a).

“Lease Year” means each successive 12 month period, or portion thereof, falling within the Term, the first Lease Year commencing on the day following the expiration of the Construction Rent Period.

“Lien” means any lien (statutory or otherwise), including mechanic’s, laborer’s, materialman’s and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, or other encumbrance against the Premises, but does not include any security interest or similar interests created in connection with any leasing of personal property (but not Equipment) or similar financial arrangements by Tenant.

“Loss” means liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, including the reasonable fees and disbursements of counsel.

“MGP” means as provided in the Recycling Contract.

“Orders” means as provided in Section 27.01.

“Part 360 Registration” has the meaning provided in Section 18.06(c).

“Partial Delivery Outside Date” has the meaning provided in Section 3.02(a).

“Partial Premises” has the meaning provided in Section 3.02(a).

“Person” means an individual or an organization, including a corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department, authority, corporation, instrumentality or agency thereof; and any fiduciary acting in such capacity on behalf of any of the above.

“Preliminary Plans and Specifications” means as provided in Section 17.03(b).

“Premises” means as provided in the first Recital hereof.

“Price Index” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the New York-Northern New Jersey-Long Island, NY-NJ-CT-PA area, all items (1982-1984=100), or any successor index thereto.

“Processing” means as provided in the Recycling Contract.

“Processing Facility” means the Processing Facility (as such term is defined in the Recycling Contract) to be operated at the Premises by Tenant.

“Processing Facility Completion Date” has the meaning provided in Section 18.04(b).

“Processing Facility Completion Deadline” has the meaning provided in Section 18.04(d).

“Prohibited Person” means as provided in the Recycling Contract.

“Recyclable Material” means as provided in the Recycling Contract.

“Recycling Contract” means as provided in the second Recital hereof.

“Regulations” has the meaning provided in Section 27.01.

“Renewal Term” has the meaning provided in Section 3.03(a).

“Rental Area” means 539,750 square feet, subject to modification upon Final Completion of the Facility (but, if applicable, retroactive to the commencement of the first Lease Year following the Construction Rent Period) to equal the actual measured area of the upland portion of the Premises (not including any rip rap or areas under water), the as-built area of decking that extends over rip rap or water, if any, upon Final Completion of the Site Work, and the as-built area of the enclosed barge unloading facility, provided that the Rental Area shall not be so modified by more than 10%.

“Rental” means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Annual Base Rent, Impositions, the amounts, if any, payable pursuant to Article 23 and any other sums, costs, expenses or deposits which Tenant is obligated to pay and/or deposit pursuant to this Lease.

“Replacement Value” means the full costs of replacing the Improvements to the extent that such costs can be covered by an “All Risk” insurance policy.

“Requirements” means: (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities applicable (now or at any time during the Term) to the Premises, or any marginal

street comprising a part of the Premises, or in front of or adjacent to the Premises to the extent the owner of the Premises would have legal responsibility therefor, (including the New York City Noise Control Code (Administrative Code Sections 24-201, et seq.), the City's Building Code (Administrative Code Section 27-101 et seq.), applicable law with respect to the Art Commission (City Charter Section 854, et seq.) and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, as the same may be amended from time to time); (ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; (iii) any final actions taken by the Commissioner pursuant to Section 1301 of the Charter with respect to the Premises; and (iv) any Certificate of Completion issued for the Improvements as then in force.

"Restoration" means either a Casualty Restoration or a Condemnation Restoration, or both.

"Restoration Costs" has the meaning provided in Section 12.03(b).

"Restoration Funds" means any insurance proceeds or condemnation awards that may be received by Tenant pursuant to the provisions of Articles 10 or 13 hereof, as a result of property loss or condemnation, together with the interest, if any, earned thereon.

"Review Standard" has the meaning provided in Section 17.03(a).

"Revised Program" has the meaning provided in Section 27.05.

"Site Work" has the meaning provided in Section 3.05(b).

"State" means the State of New York.

"Substantially All of the Premises" has the meaning provided in Section 13.01(b).

"Substantial Completion" has the meaning provided in Section 17.02.

"Taking" has the meaning provided in Section 13.01(a).

"Taxes" means any real property taxes which are assessed and levied against the Premises, including all Improvements thereon, or any part thereof, pursuant to the provisions of Chapter 58 of the Charter and Title 11, Chapter 2 of the Administrative Code, as the same may be amended, or any successor enactment.

"Tenant" means Sims Municipal Recycling of New York LLC, or its permitted successors and assigns as tenant under this Lease.

"Tenant's Work" means as provided in Article 18.

"Term" has the meaning provided in Section 3.03(a).

"Title Matters" has the meaning provided in Section 3.01.

“Unavoidable Delays” means (a) one or more delays due solely to an Uncontrollable Circumstance, provided that Tenant shall have notified Landlord in writing not later than fifteen (15) days after the occurrence of an Unavoidable Delay (and in the absence of timely notice, the Unavoidable Delay will not be recognized under this Lease if failure to give timely notice has materially prejudiced Landlord); or (b) the failure of EDC or the City to make sufficient funding available to Tenant as and when required to enable Tenant to undertake and complete the Site Work within 42 months after the Effective Date.

“Uncontrollable Circumstance” has the meaning provided in the Recycling Contract.

“Visitor Center” has the meaning provided in Section 18.07 hereof.

**Section 1.02. References.**

(a) Unless otherwise specified, references herein to Sections, Articles, Exhibits and other provisions are to the same in this Lease, i.e., “Section 1.02” means Section 1.02 of this Lease.

(b) Any reference to enacted statutory material ending in the word “Law” shall be to such law of the State of New York.

**Section 1.03. Lease Administrator.**

(a) Pursuant to the Amended and Restated Maritime Contract dated as of June 30, 2007 between the City and EDC, as such contract may be extended, EDC, during the effectiveness of such contract, will administer this Lease and act for and on behalf of Landlord with respect to Landlord’s proprietary interest and, unless otherwise specified, Landlord’s rights and obligations as Landlord under this Lease (EDC in such capacity or its successor as lease administrator, “**Lease Administrator**”). Accordingly, except as may be expressly provided herein, unless and until Tenant is notified to the contrary by Lease Administrator or the Commissioner, without limitation: (i) all notices to Landlord and submissions of documents or deposits of funds to Landlord shall be given or made to Lease Administrator, as provided in Section 32.01, (ii) all approvals by Landlord shall be sought from and granted or denied by Lease Administrator, (iii) all communications to Tenant from Lease Administrator shall be deemed to be those of Landlord, and (iv) all rights of Landlord with respect to inspection and other aspects of Lease enforcement shall be exercised by Lease Administrator. Anything above to the contrary notwithstanding, the Commissioner may directly exercise Landlord’s rights under this Lease.

(b) Some or all of Lease Administrator’s functions hereunder, in Lease Administrator’s sole discretion, may be performed by Apple.

## ARTICLE 2

### EFFECTIVE DATE

**Section 2.01. Effective Date.** This Lease, and the obligations of Landlord and Tenant hereunder, shall become effective and binding upon a date (the “**Effective Date**”) which shall occur, as set forth in a notice given by Landlord to Tenant, within 30 days after the last to occur of all of the following conditions, it being understood and agreed that neither of the Parties shall be bound by this Lease or otherwise obligated to perform its obligations hereunder until all such conditions are satisfied:

(a) Vendex Approval. Tenant shall have been approved under the City’s “Vendex” procedure. Tenant, prior to the execution of this Lease, shall have completed and submitted to Landlord the applicable forms required for Landlord’s qualification and background review of Tenant and its principals under such procedure. If the information supplied on such forms and the associated qualification and background review conducted by Landlord’s Inspector General reveal no information which, under Landlord’s policies, would preclude the leasing of the Premises to Tenant, then Landlord shall so notify Tenant, and Tenant shall be deemed approved. Tenant represents that the information provided on its Vendex forms is true and accurate. If there is a material change or if an error or omission is discovered in such information, then Tenant shall immediately notify Landlord thereof.

(b) Council Authorization. The Council of the City shall have authorized the disposition of a leasehold interest in the Premises to Tenant under the terms and conditions set forth in this Lease.

(c) Execution of Documents. The Parties shall have executed this Lease, the Recycling Contract and the Funding Agreement.

(d) E.O. 50. Tenant, if required, shall have submitted its employment report to the Division and, as applicable, shall have been approved by the Division.

(e) Contract Registration. The Recycling Contract and the Funding Agreement shall have been registered by the Comptroller or shall otherwise be effective pursuant to Sections 328 and 93.p.of the Charter.

(f) Document Delivery. Originals of the fully executed Lease, Recycling Contract and Funding Agreement shall have been delivered to the Parties.

The notice from Landlord to Tenant, to be given promptly upon the last to occur of the above, shall state that all of the foregoing actions have been completed and shall specify the Effective Date, to be within the 30 day period provided. Upon the occurrence of the Effective Date, the Parties shall execute and deliver an instrument so stating.



### ARTICLE 3

#### DEMISE OF PREMISES; DELIVERY OF POSSESSION; TERM

##### Section 3.01. Demise of Premises, Easements.

(a) Landlord hereby leases to Tenant, and Tenant hereby hires and takes from Landlord the Premises, subject to the matters set forth in Exhibit B (the "Title Matters"), for the Term as provided below. Landlord shall have the unrestricted right to further encumber its fee interest in the Premises, provided such further encumbrance shall be subject and subordinate to Tenant's interest and its rights in and to the Premises and does not adversely effect Tenant's use of the Premises for the purposes provided herein; and further provided that, with respect to the portion of the Premises comprising land under water shown as "Water Area B" on the drawing attached hereto as Exhibit A, if Landlord or a Person claiming under Landlord elects to reactivate for maritime use the adjacent pier to the southwest of the Premises, commonly known as the 35th Street Pier, then Landlord shall have the right, upon 30 days notice to Tenant and without any reduction in Rental payable hereunder, to withdraw, effective upon such reactivation, such area from exclusive use by Tenant such that the waters in such area shall be used by Tenant, without material interference with the activities of Tenant under this Lease, in common with other users having business on or in connection with the maritime use of such 35th Street Pier (and this Lease shall be modified to remove such area from the Premises and to grant a shared easement for such area to Tenant).

(b) Landlord hereby grants to Tenant a non-exclusive easement for access by Tenant and Tenant's Invitees on and over the existing roadway that extends that extends 29th Street from Second Avenue to the Premises across the area shown in white on the photograph attached as Exhibit A-1 and non-exclusive easements across the area shown in Exhibit A-1 as and to the extent necessary for utility connections to the Premises (installed pursuant to Landlord's Work or otherwise subject to Landlord's consent, which will not be unreasonably delayed or withheld).

##### Section 3.02. Delivery of Possession.

(a) As soon as practicable after the Effective Date, and provided that evidence that the liability insurance required under the Recycling Contract extends to the Premises has been furnished to Landlord and DSNY, Landlord shall deliver possession of the Premises to Tenant as provided in this Section. The Premises (and Partial Premises, if applicable) shall be delivered vacant, subject to the provisions of Section 3.05. If Landlord has not delivered the Delivery of Possession Notice (as defined below) or actual possession of the Premises, Tenant shall provide a notice to Landlord no less than 30 days before the Partial Delivery Outside Date advising Landlord of the approaching Partial Delivery Outside Date; provided that the failure of Tenant to deliver such notice shall not serve to extend or delay the Partial Delivery Outside Date or otherwise affect Tenant's rights hereunder.

(i) It shall be an Event of Termination if Landlord has not delivered possession of the Partial Premises to Tenant on or before January 31, 2009 (the "**Partial**

**Delivery Outside Date**"). The "**Partial Premises**" shall mean the area of the Premises labeled "Initial Premises Delivery Area" shown on the drawing attached as Exhibit A-2 hereto.

(ii) It shall be an Event of Termination if Landlord has not delivered possession of the entire Premises to Tenant on or before March 31, 2009 (the "**Full Delivery Outside Date**").

(b) Prior to the delivery of possession as provided in (a) above, upon request to Landlord, Tenant, subject to such reasonable conditions and requirements as Landlord may impose, shall be allowed to access the Premises to inspect and perform any testing necessary for Tenant to design the Facility, and to prepare for the construction and operation thereof.

**Section 3.03. Initial Term and Renewal Terms.**

(a) The term of this Lease (the "**Term**") is the period of time from and after the Lease Commencement Date (as defined below) until the expiration or earlier termination of this Lease, and consists of the Initial Term and any Renewal Term. The initial term of this Lease (the "**Initial Term**") shall commence at 12:01 a.m., on the date (the "**Lease Commencement Date**") set forth in a notice (the "**Delivery of Possession Notice**") from Landlord to Tenant to the effect that as of the date specified in such notice, which date shall be not less than 30 days after the date on which such notice is given, Landlord will deliver possession of the Premises or the Partial Premises to Tenant (and, if such delivery is of the Partial Premises, Landlord shall subsequently notify Tenant of the date on which Landlord will deliver possession of the balance of the Premises). In each case, such delivery will be in accordance with the provisions of Section 3.02(a). Unless earlier terminated pursuant to the provisions hereof, the Initial Term shall expire at 12:01 a.m. on the 20th anniversary of the first day of the month following the month in which the Facility Completion Date occurs. If the Recycling Contract is extended as provided in Section 2.02 thereof, then, without the necessity of notice from or to either Party, the term of this Lease shall be extended for the same period of time as set forth in such Section 2.02 of the Recycling Contract, upon the same terms and conditions, including the same formulae for determining Rental, as applicable during the Initial Term. Any such extension of the Term hereof is referred to as a "**Renewal Term**" and will commence immediately upon expiration of the Initial Term or previous Renewal Term, as the case may be, and, unless terminated earlier pursuant to the provisions hereof, will expire at 12:01 a.m. on the last day of such Renewal Term.

(b) If the term is extended for one or more Renewal Terms as provided above, then, at either Party's request, such extension(s) shall be memorialized in a writing signed by the Parties.

(c) If the Lease Commencement Date has not occurred by January 31, 2010, this Lease shall thereupon terminate.

**Section 3.04. Term Contingent on Recycling Contract.** Anything in this Lease to the contrary notwithstanding, the Term of this Lease is subject to and contingent upon the effectiveness of the Recycling Contract. If the Recycling Contract shall be terminated pursuant to Article 11 thereof or otherwise, then this Lease shall thereupon terminate.

**Section 3.05. Premises "As Is".**

(a) Tenant Takes "As Is". Tenant has inspected the condition of the Premises and accepts the Premises "as is," except (i) for subsurface or latent conditions to the extent that the same qualify as an "Uncontrollable Circumstance" pursuant to Section 1.03 of the Recycling Contract, (ii) for Landlord's Work, and (iii) as provided in Section 3.02(a) above and Sections 3.05(b) and (c) below. Landlord and Tenant acknowledge that the fill included within and constituting the Premises may not be of sufficient strength, character or quality to support or accommodate, without piling or other remedial action, the construction, maintenance and operation of the Facility, and that remediation of any such condition is the obligation of Tenant, except to the extent included in the Site Work.

(b) Site Work. Landlord is responsible for funding, as set forth in the Funding Agreement, certain work required to prepare and equip the Premises for construction, maintenance and operation of the Facility, including dredging, decking, bulkheading and other work (such work, as more particularly described in Exhibit B to the Funding Agreement, collectively, the "Site Work"). Tenant has agreed to perform the Site Work pursuant to the Funding Agreement; provided that Landlord or Tenant, as shown on Exhibit E, shall obtain the federal, state and local permits and approvals listed in Exhibit E for the Site Work (and, as the Parties may agree, such other permits required for the expeditious completion of the Site Work) under the Funding Agreement). It shall be an Event of Termination if Landlord does not provide funding under the Funding Agreement as and when required to enable Tenant to undertake and complete the Site Work within 42 months after the Effective Date, or if the Site Work cannot be completed for any other reason by the Facility Completion Deadline (other than due to an Event of Default by Tenant under the Funding Agreement). Performance of the Site Work shall not be part of Tenant's Work, but rather shall be governed by the Funding Agreement.

(c) Hazardous Substances. Tenant acknowledges that EDC, on behalf of Landlord, has commissioned the Environmental Study with respect to property including the Premises, and has provided a copy of the same to Tenant. Notwithstanding the Environmental Study or any other environmental report, if there exist Hazardous Substances at the Premises which were not brought on by Tenant, its agents, subcontractors or Invitees or were not intentionally deposited on any portion of the Premises (over which, at the time, Tenant had exclusive control) by a Person other than DSNY, its contractors or agents or an Invitee of DSNY, Landlord or the City, or an Authorized Deliverer, then Landlord shall promptly remediate any such conditions to the extent required by applicable law and as provided in the Recycling Contract. Hazardous Substances found in, at or on the Premises among the Recyclable Material delivered by DSNY, its contractors or agents or an Invitee of DSNY, Landlord or the City, or an Authorized Deliverer will be deemed to have been delivered by DSNY or an Authorized Deliverer, unless DSNY can prove otherwise by clear and convincing evidence. Tenant's obligation and responsibility with respect to the existence of any Hazardous Substances at the Premises and/or the performance of environmental clean up is subject to the Landlord's obligations stated herein and in the Recycling Contract. Landlord will indemnify and hold harmless Tenant, its owners and Affiliates and each of their members, officers, directors, trustees, employees, agents, servants and contractors for any Loss caused by Hazardous Substances on, at, under or about the Premises, or which migrate onto or under the Premises from adjacent sites, or which are delivered by DSNY, its contractors or agents or an Invitee of

DSNY, Landlord or the City, or an Authorized Deliverer to the Facility amongst Recyclable Material or otherwise or which are deposited on the Premises, but not for Hazardous Substances brought onto the Premises by Tenant, its agents, subcontractors or Invitees or intentionally deposited on any portion of the Premises (over which, at the time, Tenant had exclusive control) by a Person other than DSNY, its contractors or agents or an Invitee of DSNY, Landlord or the City, or an Authorized Deliverer. For the purpose of this section, Loss will include the costs of disposal of Hazardous Substances and the costs of remediation. Notwithstanding any other provision of this Lease, Landlord's indemnity obligations under this Section shall not be suspended as a result of an Uncontrollable Circumstance pertaining to Hazardous Substances. Tenant, its owners and Affiliates and each of their members, officers, directors, trustees, employees, agents, servants and contractors will also be entitled to indemnity for Losses arising from any suit, claim, counterclaim, investigation or other proceeding brought by a third Party based on allegations which if proven would entitle any such Person to indemnity otherwise provided hereunder. Tenant shall have the right to require DSNY to dispose of any Hazardous Substances and effect any remediation necessary or required with respect to any circumstance where Tenant would be entitled to indemnity under this Section 3.05(c). Notwithstanding the above, it shall be an Event of Termination if the presence of Hazardous Substances at the Premises shall delay the delivery of possession of the Premises to Tenant by the Outside Date or materially delay the performance of Tenant's Work by Tenant.

#### ARTICLE 4

##### ANNUAL BASE RENT; RENTAL; NET LEASE

###### Section 4.01. Annual Base Rent.

(a) Annual Base Rent. Throughout the Term, Tenant shall pay to Landlord annual rent ("**Annual Base Rent**") in the amounts and in the manner provided below:

(i) For the period (the "**Construction Rent Period**") commencing upon the Lease Commencement Date and ending upon the last day of the month in which occurs the earlier of (i) the Facility Completion Date and (ii) the Facility Completion Deadline, the amount of \$10.00, receipt of which is hereby acknowledged.

(ii) For the first Lease Year following the Construction Rent Period, an annual amount of \$1.00 per square foot of the Rental Area, as such amount is escalated in proportion to any increase in the Price Index from the Base Index to the Price Index for the last month of the Construction Rent Period, provided that any such increase shall not exceed the rate of 3% per annum, compounded over the period from the Lease Commencement Date through the month in which occurs the end of the Construction Rent Period. The escalation of the \$1.00 per square foot is illustrated as follows:

If the escalation in the Price Index over a three year Construction Rent Period is 15%, then the result of that escalation, or \$1.15, is compared with the result of a not-to-exceed or "cap" calculation of 3% per annum compounded for the three year period in question,

or  $1.03 \times 1.03 \times 1.03$  or 1.0927, for \$1.0927. Since the “cap” calculation results in a lower rate, it governs, and the resulting Annual Base Rent for the first Lease Year is \$1.0927 per square foot of Rental Area.

Note: in the case of a partial year, the 1.03 factor for such year is reduced proportionately.

(iii) For each subsequent Lease Year throughout the remainder of the Term, including any Renewal Terms, an amount equal to an annual amount of \$1.00 per square foot of the Rental Area, as such amount is escalated each year in proportion to any increase in the Price Index from the Base Index to the Price Index for the last month of the prior Lease Year, provided that any such escalation shall not exceed 3% per annum, compounded, over the period from the Lease Commencement Date through the end of such prior Lease Year.

(iv) For any period that Tenant, pursuant to Section 9.01 uses a portion of the Premises for the purpose of conducting scrap or other commercial activities physically separate from the Acceptance and Processing of Recyclable Material pursuant the Recycling Contact, Annual Base Rent for the area in which such physically separate activities occur shall be increased by an amount equal to \$1.75, as the same has been escalated in proportion to any increase in the Price Index from the Base Index to the Price Index for the last month of the prior Lease Year, provided that any such escalation shall not exceed 3% per annum, compounded, over the period from the Lease Commencement Date through the end of such prior Lease Year, for each square foot of the Rental Area so used. Subject to verification by Landlord, the area of any Rental Area so used shall be computed and certified to Landlord by the Architect.

The Annual Base Rent payable by Tenant shall be paid in monthly installments in the manner provided by Section 4.02 below. The amount of the monthly installments of Annual Base Rent shall be equal to one twelfth (1/12) of the Annual Base Rent then in effect.

#### **Section 4.02. Payments of Rental.**

(a) Annual Base Rent. Annual Base Rent shall be due and payable in advance, in equal monthly installments, on the first day of each month. Any monthly installment of Annual Base Rent that is due for any period of less than a full month shall be apportioned on the basis of the number of calendar days in such month.

(b) Rental. All Rental (other than Annual Base Rent) payable under this Lease shall be paid in full by Tenant upon demand, but in any event not later than the first day of the month following the giving of any notice related thereto.

(c) Manner and Place of Payment. All payments of Annual Base Rent and other Rental hereunder shall be paid to Landlord (or, in the case of Impositions, to such other Person as required by the rules and regulations governing payment thereof) when the same shall become due and payable as provided herein, without notice or demand (except as otherwise provided herein), by check (or by certified check where such payment is called for herein) drawn on an account maintained with a bank that is a member of the New York Clearing House

Association (or any successor entity with similar functions), payable to the order of Apple at the following address:

Apple Industrial Development Corp.  
P.O. Box 029188  
Brooklyn, New York 11202  
Attention: Comptroller

or to the order of such other entity, or at such other address as Landlord may designate in writing. All payments hereunder by Tenant shall be denominated in United States Dollars, which shall be the currency of account for all purposes of this Lease. Impositions shall be payable in the form and to the location provided by rules and regulations governing the payment thereof.

**Section 4.03. Late Payment.**

(a) If (i) any installment of Annual Base Rent shall become overdue for 10 days after notice that such Rental is due and payable as provided in this Lease, or any other payment due hereunder is not received by Landlord or other party to whom it is due within 30 days after notice thereof, or (ii) if 30 days after notice that Landlord made a payment required to be made by Tenant under this Lease, then Tenant shall pay Landlord, in addition to such overdue Rental or other payment, or payment made by Landlord, immediately upon demand, a late charge on the amount of such overdue Annual Base Rent, Rental or other payment, or payment made by Landlord, calculated on the basis of the Late Charge Rate from the 30<sup>th</sup> day from notice, or the date Landlord made payment on behalf of Tenant, as the case may be, to the date on which actual payment of any such amount by Tenant is received by Landlord or other party to which such payment is due. Any such late charge imposed on Tenant hereunder shall constitute liquidated damages payable to Landlord for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make payment of Rental as required hereby on or before such payments are due.

(b) The failure by Landlord to insist upon the performance by Tenant of its obligations to pay late charges in one or more instances shall not constitute a waiver by Landlord of its right to enforce the provisions of this Section 4.03 in any other instance thereafter occurring. The provisions of this Section 4.03 shall not be construed to extend any grace periods or notice periods regarding any Rental payments required to be made by Tenant under this Lease. The provisions of this Section 4.03 shall survive the expiration or earlier termination of this Lease.

**Section 4.04. Net Lease.** It is the intention of Landlord and Tenant that, except as provided in Section 5.06 regarding Taxes or as otherwise provided in this Lease or the Recycling Contract, (a) Rental shall be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, credit, setoff, or offset whatsoever so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) except as may be expressly provided in this Lease with respect to Landlord's obligations, actions and omissions, Tenant shall pay all costs, expenses and charges of every kind relating to the Premises (except

Taxes) that may arise or become due or payable during or after (but attributable to a period falling within) the Term.

## ARTICLE 5

### IMPOSITIONS AND TAXES

**Section 5.01.** Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 5.02(c), all Impositions that at any time are (or if, by virtue of City ownership of the Premises, the Premises or Landlord were not exempt therefrom, would be) assessed, levied, imposed upon, or would become due and payable out of, or with respect to, or would be charged with respect to, the ownership, leasing, or the Tenant's operation, or use, or occupancy and possession of, during the Term: (a) the Premises or any part thereof; (b) any other appurtenances of the Premises or any part thereof; (c) any personal property or other facility used by Tenant in the operation of the Premises; (d) the Rental (or any portion thereof) or any other amount payable by Tenant hereunder; (e) any documents to which Tenant is a party creating or transferring an interest or estate in the Premises, or any portion thereof; (f) the use and occupancy of the Premises; or (g) the transaction contemplated by this Lease.

**Section 5.02.** Payment of Impositions.

(a) Subject to the provisions of Sections 5.01 and 38.02, Tenant shall pay each Imposition or installment thereof not later than the last date the same may be paid without incurring any interest or penalty. However, if by law, at the taxpayer's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay such Imposition in installments and shall be responsible for the payment of such installments with interest, if any, as may be required by law.

(b) If Tenant fails to make any payment of an Imposition (or installment thereof) within the time required in the preceding subsection (a), Tenant shall, at Landlord's request, and notwithstanding (a) above, pay all Impositions or installments thereof payable by Tenant during the next 12 months not later than 10 days before the due date thereof. Nothing in this paragraph shall be construed to limit any remedies available to Landlord under this Lease and otherwise upon Tenant's Default to timely pay any Imposition.

(c) Tenant shall pay Impositions in the form, to the entity and at the location provided by the rules and regulations governing the payment of such Impositions as if Tenant owned the Premises.

**Section 5.03.** Evidence of Payment. Tenant shall, upon Landlord's request, furnish to Landlord, within 30 days after the later of the date when an Imposition is due and payable and the date upon which such request is made, canceled checks or official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

**Section 5.04.** Evidence of Non-Payment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any

Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

**Section 5.05.** Apportionment of Impositions. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time either before the Lease Commencement Date or after the expiration of the Term shall be apportioned pro rata between Landlord and Tenant as of the Lease Commencement Date or the expiration, as the case may be.

**Section 5.06.** Taxes. Subject to Section 5.01, Landlord shall pay, or otherwise arrange for the cancellation or other satisfaction and discharge of record of, any and all Taxes assessed and levied against the Premises, on or before the due date thereof.

**Section 5.07.** Survival. The provisions of Sections 5.01 through 5.05 (inclusive) of this Article 5 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 6

### UTILITIES

**Section 6.01.** Utility Service to Premises. Except as provided in Sections 3.05(b) and 15.01(b)-(d) and in Article 7 hereof: (x) Tenant must obtain and pay all costs of utilities consumed at the Premises, including all sewer charges and charges for all water, gas, heat and electricity; and (y) Tenant, at its sole cost and expense, shall procure all permits, approvals and licenses necessary to secure delivery of such utility services. Tenant shall pay all utility charges directly to the companies supplying such utility services, as the same become due. Tenant (subject to assistance under the Funding Agreement) shall pay all costs of construction of on-Premises utilities except as otherwise provided in Article 7 with respect to Landlord's Work. Responsibility for maintenance and repair of utilities shall be as provided in Article 15.

**Section 6.02.** No Obligation on the Part of Landlord. Except as provided in Article 7, or in Article 15, Landlord shall have no obligation to provide any utility services to the Premises, or any part thereof, and neither Landlord, Lease Administrator nor Apple shall have any responsibility or liability to Tenant or any third party in the event any such utility services are not provided to the Premises, or any part thereof.

## ARTICLE 7

### LANDLORD'S WORK

Landlord, at its expense, shall secure all necessary permits, approvals and licenses for, and shall perform and construct, the off-site utility and street work generally described in the schedule of Landlord's Work annexed hereto as Exhibit C. Such work shall be in accordance with detailed plans and specifications prepared by the Architect and approved by Landlord and



Tenant. Landlord shall complete such work so as to coordinate with, and not interfere with, the timely completion of Tenant's Work.

## ARTICLE 8

### NO DREDGING; SUNKEN CRAFT

**Section 8.01.** No Dredging. Tenant shall not dredge in the slips, or water adjacent to, or included in, the Premises without Landlord's prior written approval and compliance with all Requirements. It is understood that the Site Work, separately treated hereunder, includes substantial dredging.

**Section 8.02.** Sunken Craft. If during the Term, the half basins, slips, or water adjacent to or included within the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft of Tenant or a Tenant Invitee, then Tenant, at its sole cost and expense, shall promptly and lawfully eliminate such obstruction, or cause the same to be eliminated. If, after said notice, Tenant fails to eliminate such obstructions, then Landlord may, in its discretion, undertake same, and, in such event, Tenant shall reimburse Landlord for the reasonable expenses so incurred. If during the Term, said waters adjacent to the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft owned or operated by a Person other than a Tenant Invitee and through no fault or negligence of Tenant, then Landlord shall promptly remove such obstruction, or cause the same to be removed, without cost or expense to Tenant. If Landlord fails to promptly remove such obstruction, Tenant, after notice to Landlord, may remove the obstruction and Landlord shall reimburse Tenant for the reasonable cost thereof.

## ARTICLE 9

### USE OF PREMISES

**Section 9.01.** Permitted Use. Except as otherwise provided in this Section, Tenant shall use and occupy the Premises, and shall permit the Premises to be used, only for the development and operation of a maritime dependent materials recovery facility (the "**Facility**") pursuant to and in accordance with Article 18 hereof and applicable provisions of the Recycling Contract. Tenant additionally may use the Premises ("**Additional Uses**") (i) to receive, store, process and ship recyclable material derived from commercial sources and (ii) for use as a scrap yard for materials, paper, metals and glass (or other value added operations) and ancillary uses thereto. Any Additional Use shall be subject to Landlord's and DSNY's review and written approval, which shall not be unreasonably withheld, conditioned or delayed. DSNY's right of review and approval as provided above shall primarily consider and be exercised in relation to operational considerations respecting the delivery and Acceptance of Recyclable Material under the Recycling Contract, and Landlord's right of review and approval as provided above shall primarily consider and be exercised in relation to health, safety and other applicable Requirements. Any Construction Work required in connection with an Additional Use shall be subject to the provisions of Article 17.

**Section 9.02. Authority to Conduct Business.**

(a) This Lease does not grant any permission, license or authority for the performance or conduct of any business, operation or use which may require any permit or approval from any public or private party.

(b) Except as provided in Sections 3.05 or 15.01, in Article 7, or in Exhibit E hereof, Tenant shall obtain and maintain in full force and effect during the Term, at its sole cost and expense, any governmental license or permit imposed or mandated by any Governmental Authority in connection with Tenant's trade or business and the use of the Premises, and shall comply with any other Requirement for the proper and lawful operation of the Premises by Tenant for the purposes authorized by this Lease.

**Section 9.03. Unlawful Use.** Tenant shall not operate its business in a hazardous manner or use or occupy the Premises, or permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or hazardous business, use or purpose or in any way in violation of any Requirement or this Lease, or in such manner as may make void or voidable any insurance then in force with respect to the Premises; provided, however, Tenant shall not be responsible for DSNY's or Landlord's (or their respective Invitees') acts. Immediately upon the discovery of any such unlawful, illegal or hazardous business, use or purpose by Tenant or anyone acting by, through or under Tenant, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance thereof, including if necessary, the removal from the Premises of any Person using any portion of the Premises for any such business, use or purpose. Tenant shall not keep, or permit to be kept, on the Premises any article, object, item, substance or thing that may cause damage to the Premises or any part thereof (except in the ordinary course of conduct in connection with the uses permitted hereunder), or that is prohibited or not permitted by the Fire Department, Board of Fire Underwriters, or other authority having jurisdiction over or setting standards covering the Premises.

**Section 9.04. Representations by Landlord; No Permit.**

(a) Except as otherwise stated in this Lease or the Recycling Contract, neither Landlord nor any Person on its behalf has made or makes any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this Lease or the Premises.

(b) Landlord represents to Tenant that the Premises is zoned so as to permit and, subject to the receipt of all lawfully required permits and approvals and compliance with all Requirements, the Premises may be developed and used for the principal purpose stated in this Lease. Landlord has no knowledge or information that the intended or permitted use of the Premises hereunder is contrary to law or that legally required permits and approvals and permits will not be forthcoming.

(c) It shall be an Event of Termination if (i) there is an Unavoidable Delay that extends the Facility Completion Deadline for more than 18 months (and such Unavoidable Delay would not give rise to an Event of Termination under another provision of this Lease or the Funding Agreement), or (ii) the principal use of the Premises as contemplated by this Lease

is finally determined to be not permitted by a court of competent jurisdiction, or (iii) this Lease or a required permit or approval is declared void or invalid, or (iv) despite all good faith efforts by the Party responsible for obtaining the particular permit or approval, including (in the case of Tenant) the taking of all steps reasonably recommended by Landlord, (A) any permit or approval required for the initial construction or commencement of operation of the Facility is unable to be obtained within 18 months after the Effective Date, (B) any other permit or approval later required during the Term is unable to be obtained by the date required to avoid interruption of operation of the Facility, or (C) any permit or approval referred to in clause (A) or (B) above, having been obtained, is unable to be maintained, renewed or extended as required throughout the Term, or (v) despite all good faith efforts by Landlord and Tenant, the Part 360 Registration, if required in connection with the performance of Tenant's obligations under this Lease, has not been approved by the State within 60 days after the date the Processing Facility would have been Substantially Complete and capable of operating as contemplated by the Recycling Contract, but for the failure to complete the Part 360 Registration.

## ARTICLE 10

### INSURANCE

From and after the Commencement Date, Tenant at its sole cost and expense, shall carry and maintain (or shall cause to be carried and maintained) insurance coverage of the following types, in the minimum limits and for the periods set forth below.

**Section 10.01. Coverage under Recycling Contract.** Tenant will maintain all the coverages required under Attachment F of the Recycling Contract. In addition to the liability coverage required under such Attachment F, Tenant will carry wharfinger's insurance.

**Section 10.02. Property Special Perils Insurance.** At all times during the Term after Final Completion of the Facility, Tenant shall carry and maintain insurance against all risks of loss of or damage to the Premises customarily covered by "All Risk" or "Special Perils Form" policies in the broadest form available ("Special Perils Insurance"). Except as otherwise provided below, such insurance shall be in the amount of the full Replacement Value (as defined below) of the Improvements and the Site Work (without depreciation or obsolescence clause). Such insurance shall designate Tenant as "Named Insured" and shall include the following coverages and clauses:

(a) if not otherwise included within the Special Perils Insurance coverage specified above, building collapse, earthquake, fire, flood, hurricane, impact of vehicles and aircraft, lighting, malicious mischief, mudslide, terrorism, tsunami, vandalism, water damage and windstorm; provided, however, that, in the case of coverage for flood, the amount of insurance shall be subject to a sublimit of \$1,000,000;

(b) if not otherwise included within the Special Perils Insurance coverage specified above, a real and personal property endorsement waiving all co-insurance requirements;

(c) contingent liability from operation of building laws, together with an “Ordinance or Law Coverage” or “Enforcement” endorsement if any of the Improvements, the Site Work or the use of the Premises shall at any time constitute legal non-conforming structures or uses;

(d) increased cost of construction specifying that the insurance proceeds shall be available to pay all costs of demolition, including the costs of debris removal, grading and fencing and all increased costs of construction in the event that any insured hazard results in a loss;

(e) a provision for a deductible of not more than One Hundred Thousand Dollars (\$100,000) per loss, unless a greater deductible is typically provided in casualty policies covering property similar to the Improvements and the Site Work in location, construction and use; and

(f) containing no exclusion (including, without limitation, exclusion for damages due to terrorism) except such exclusions as may be reasonable and customary in similar policies covering similar risks.

Special Perils Form Insurance shall also cover such other insurable perils as, under good insurance practice, other commercial property owners from time to time insure against property, buildings and structures similar to the Improvements and the Site Work in height, location, nature, type of construction and use, as evidenced and reasonably requested by Landlord.

For the purposes hereof, the following terms have the following meanings:

“**Replacement Value**” means the full costs of replacing the Improvements and the Site Work including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by Special Perils Insurance. The Replacement Value of the Improvements and the Site Work shall be adjusted at least once in each twelve (12) month period throughout the Term (after final completion of the Facility) by a percentage equal to the percentage change in the Index (as defined below) in effect on such date as compared to the Index in effect on the date of the last adjustment.

“**Index**” means the Dodge Building Cost Index or similar index (e.g. Marshall & Swift) or such other published index which shall be reasonably selected from time to time by Landlord, but not more often than once every three years, provided that such Index shall be appropriate to the type and location of the Improvements and the Site Work.

**Section 10.03. Flood Insurance.** If the Premises are located in an area designated as “flood prone” or a “special flood hazard area” under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. §4001 et. seq., at all times during the Term, Tenant shall carry and maintain flood coverage to the maximum extent available under the federal flood insurance plan.

**Section 10.04. Builder’s Risk Insurance.** At all times during the performance of any Construction Work and/or the Site Work, Tenant shall carry and maintain Builder’s Risk Insurance for the full Replacement Value of such Construction Work and/or the Site Work, as

applicable. The Builder's Risk Insurance required hereby shall be written on a completed value (non-reporting) basis, insuring Tenant, the general contractor or construction manager, if any, and all subcontractors employed in connection with the Construction Work and/or the Site Work being performed. Such insurance policy:

(a) shall cover (i) the same perils that Special Perils Insurance must cover; (ii) loss of materials, equipment, machinery and supplies, or of any temporary structure, hoist, sidewalk, retaining wall, or underground property; (iii) soft costs, plans, specifications, blueprints and models; and (iv) demolition and increased cost of construction, including increased costs arising from changes in Requirements at the time of restoration and coverage for operation of building laws, all subject to a sublimit reasonably satisfactory to Landlord;

(b) shall contain a written acknowledgment by the insurance company that its right of subrogation has been waived with respect to all of the insureds named in such policy and an endorsement stating that "permission is granted to complete and occupy;"

(c) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment at any off-site storage location intended, or while in transit, for use with respect to the Project and/or the Premises;

(d) unless approved by Landlord, shall contain no exclusions other than those that are reasonable and customary in Builder's Risk insurance policies issued in connection with construction work similar in all material respects to the Construction Work and/or the Site Work being performed; and

(e) shall designate Tenant as "First Name Insured".

**Section 10.05. Professional Liability.** Tenant shall use commercially reasonable efforts to cause all Architects engaged to perform architectural and/or engineering services in connection with any Construction Work and/or the Site Work to carry and maintain professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) for a period of three (3) years following the completion of the Construction Work and/or the Site Work to be performed at the Premises. Tenant shall cause other consultants engaged for the performance of any design services to carry and maintain professional liability insurance in like amount and for the same period, but only if professional liability insurance for the type of services rendered by such consultant is available at commercially reasonable prices and is customarily provided for undertakings comparable in cost and/or scope as the design and construction of the Improvements.

**Section 10.06. General Requirements Applicable to Policies.**

(a) **Insurance Companies.** All of the insurance policies required by this Article 10 shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A-VII" or better and a claims paying ability of "AA" (or its equivalent) or better by at least two (2) nationally recognized rating agencies acceptable to Landlord in all respects, one of which shall be Standard and Poor's Ratings Services, Inc.

(b) Term. Tenant shall procure policies for the insurance required by Sections 10.02 and 10.03 hereof for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof.

(c) Waiver of Subrogation. Each of the policies of insurance required by Sections 10.02 and 10.04 hereof shall contain a written acknowledgement (annexed to the policy) by the insurer that, as and to the extent set forth in Section 12.02(a) hereof, Tenant has waived rights (including rights of subrogation) Tenant or the insurer might otherwise have against Landlord, DSNY and their respective Invitees and that such waiver shall be binding on the insurer.

(d) Required Insurance Policy Clauses. Each policy of insurance required to be carried and maintained pursuant to this Article 10 shall contain the following provisions and agreements, from and after the date such insurance policy is required to be carried pursuant to this Article 10:

(1) A provision that no act or omission of Tenant or other insured named in such policy, including, without limitation, any use or occupation of the Premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord;

(2) To the extent available on a commercially reasonable basis, an agreement by the insurer that such policy shall not be cancelled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days' prior written notice to Landlord, including, without limitation, cancellation or non-renewal for non-payment of premium.

(3) A provision that notice of accident or claim to the insurer by Tenant or any other insured named in such policy shall be deemed notice by all insureds under the policy.

(e) Notice from Insurer to Landlord. Notices from the insurer to Landlord shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. All notices and correspondences from the insurer to Landlord must be delivered to the following addresses or to such other addresses as Landlord may notify the insurer of from time to time:

To the Landlord:

New York City Economic Development Corporation  
110 William Street  
New York, New York 10038  
Attention: Senior Vice President for Asset Management

with a copy to:

New York City Law Department

100 Church Street  
New York, New York 10007  
Attention: Chief, Economic Development Division

(f) Primary Protection. All insurance policies required by this Article 10 shall be primary protection.

Section 10.07. Evidence of Insurance. Prior to the commencement of the Term and, to the extent available on a commercially reasonable basis, at least sixty (60) days prior to the expiration of any of the policies required to be maintained or caused to be maintained by Tenant hereunder, Tenant shall deliver or cause to be delivered Landlord certificates of insurance for such policies, reasonably satisfactory to Landlord in form and substance consistent with this Article 10.

Section 10.08. Compliance With Policy Requirements. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this Article 10. Tenant shall perform, satisfy and comply with all conditions, provisions and requirements of all such insurance policies, and shall give and cause its contractors to give the insurer, Landlord notice of all claims, accidents and losses promptly, but in any event no later than five (5) Business Days after Tenant or any of its contractors acquires actual knowledge of the same.

Section 10.09. Increases in Coverage and Additional Insurance. Landlord shall have the right, at any time and from time to time, to modify, increase or supplement the insurance coverages, limits, sublimits, minimums and standards required by this Article 10 to conform such requirements to the insurance coverages, limits, sublimits, minimums and standards that at the time are commonly carried by owners of premises and improvements comparable to the Premises, the Improvements and the Site Work, or are commonly carried by businesses of the size and nature of the business conducted at the Premises; and provided that in any such event, unless Landlord reasonably demonstrates the need for such increase of coverage, the amount of any such increased coverage shall not exceed the amount of similar coverage that are commonly carried by owners of comparable property or in connection with similar businesses.

Section 10.10. No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by Tenant hereunder shall not constitute a representation or warranty by Landlord that such insurance is adequate or sufficient in any respect.

Section 10.11. Blanket Policies. The insurance required by this Article 10 may, at Tenant's option, be effected by a blanket policy covering the Premises and other properties owned or leased by Tenant, provided such policy otherwise comply with the provisions of this Article 10 and allocate to the Premises the specified coverage, including, without limitation, the specified coverage for all insureds required to be named as "named insureds" or "additional insureds" hereunder, without possibility of reduction or coinsurance by reason of, or because of damage to, any other properties named therein.

## ARTICLE 11

intentionally omitted

## ARTICLE 12

### DAMAGE, DESTRUCTION AND RESTORATION

**Section 12.01. Notice to Landlord.** If the Premises or any part thereof are destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall immediately notify Landlord upon obtaining actual knowledge thereof.

**Section 12.02. Casualty Restoration.**

(a) Tenant's Obligation to Restore. If the Premises shall be damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen (a "Casualty"), then Tenant shall restore the Premises, to the extent reasonably practicable consistent with performing the functions required under the Recycling Contract and this Lease, to the character of the Improvements and the Site Work as they existed prior to the Casualty, unless Landlord in its sole discretion otherwise agrees (a "Casualty Restoration"), provided that, in the case of any Casualty caused by or attributable to Landlord, DSNY or their respective Invitees, as long as Tenant maintained the insurance coverage required hereunder, Tenant's obligation to restore the Premises shall be subject to Tenant's receipt of insurance proceeds sufficient to pay in full the cost of the Casualty Restoration (and, to the extent of such insurance proceeds received by Tenant, Tenant hereby waives any rights (including rights of subrogation) Tenant or its insurer(s) might otherwise have against Landlord, DSNY and/or their respective Invitees with respect to such a Casualty caused by or attributable to Landlord, DSNY or their respective Invitees) and otherwise shall be subject to Landlord's obligations under Article 23 below. Anything in this Section 12.02 to the contrary notwithstanding, (i) if the Casualty is of such a nature and magnitude that it may occasion the termination of the Recycling Contract pursuant to Section 11.02 or 15.02 thereof and accordingly the termination of this Lease pursuant to Section 3.04 hereof, then the above obligation to restore shall be suspended for up to three months pending the determination with respect to such Recycling Contract termination, and (ii) Tenant's obligations set forth in this Section 12.02(a) are not intended to modify, and remain subject to, Landlord's obligations under Section 3.05(c) above.

(b) Intentionally omitted.

(c) Commencement of Construction Work. Subject to Unavoidable Delays, Tenant shall commence the Construction Work in connection with a Casualty Restoration within 120 days after the Casualty (unless the commencement of such Construction Work requires acts to be done or conditions to be removed which cannot, by their nature, reasonably be done or removed within such 120-day period, in which case Tenant shall commence such acts or removal of conditions within such 120-day period and shall diligently and continuously prosecute the same so Construction Work begins within a reasonable period). For purposes of this Section



12.02(c), a delay by Tenant's insurer in adjusting or disbursing the insurance proceeds shall constitute an Unavoidable Delay in the commencement of such Construction Work if the amount of the insurance proceeds reasonably estimated to be payable exceeds two times the applicable deductible amount in the insurance policy covering the loss; provided that during the period of such Unavoidable Delay Tenant takes all reasonable steps to insure public and worker safety, including such measures as Landlord reasonably may direct, and Tenant diligently pursues Tenant's rights against the insurer.

(d) Option to Terminate. Notwithstanding anything in this Section 12.02 to the contrary, a Casualty shall be an Event of Termination if: (i) at the time of such Casualty no Default by Tenant shall have occurred and be continuing; and (ii) (x) Tenant is not obligated to restore the Premises under Section 12.02(a) above and no accommodation has been reached with Landlord under Article 23 hereof or otherwise, pursuant to which Landlord would bear the costs of the Casualty Restoration not covered by the proceeds of insurance, or (y) a delay by Tenant's insurer in adjusting or disbursing insurance proceeds shall continue for more than 9 months after such Casualty despite Tenant's diligent pursuit of Tenant's rights against the insurer, or (z) fewer than 48 months shall remain of the Term, as it may have been extended pursuant to a renewal of the Recycling Contract pursuant to Section 2.02 thereof; and (iii) in light of the scale of the casualty and extent of the investment needed to restore, Tenant reasonably determines that it is not practicable to restore the Premises.

Section 12.03. intentionally omitted.

Section 12.04. intentionally omitted.

Section 12.05. Effect of Casualty on This Lease. Except as otherwise provided in this Lease or the Recycling Contract, in the case of a Casualty, this Lease shall not terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental, due to such Casualty, provided that Annual Base Rent shall abate, on a pro rata basis, based on the extent and for the period that the operation of the Facility is impaired, reduced or otherwise hindered.

Section 12.06. Effect of Lease Termination. If this Lease is terminated pursuant to Section 12.02(d) above, Tenant shall be deemed to have assigned to Landlord all of Tenant's right, title and interest, if any, in and to any insurance proceeds paid or payable with respect to the Casualty that resulted in such termination. This provision shall survive the termination of this Lease.

Section 12.07. intentionally omitted.

Section 12.08. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives, except to the extent provided in Section 12.02(d) above, all rights to quit or surrender the Premises or any part thereof by reason of any Casualty to the Premises. The provisions of this Article shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law and shall govern and control in lieu thereof.

## ARTICLE 13

### CONDEMNATION

**Section 13.01. Certain Definitions.** For the purposes hereof the following terms shall have the following meanings:

(a) “Taking” means a taking of the Premises or any part thereof for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, irrespective of whether the same affects the whole or Substantially All of the Premises or a lesser portion thereof, but shall not include a taking of the fee interest in the Premises or any portion thereof if, after such taking, Tenant’s rights under this Lease or the Recycling Contract or the operation of the Facility are not affected.

(b) “Substantially All of the Premises” means such portion of the Premises as would leave remaining, after a Taking, a balance of the Premises, as augmented by Tenant’s Work, that would not reasonably accommodate a Facility pursuant to Section 9.01 hereof to allow Tenant to fulfill its obligations under the Recycling Contract, due either to the area so taken or the location of the part so taken in relation to the part not so taken in light of economic conditions, zoning laws, physical and operational constraints, or building regulations then existing or prevailing and after performance and/or observance by Tenant of all covenants, agreements, terms and conditions contained herein or by law required to be performed or observed by Tenant. The determination herein shall be subject to arbitration in accordance with Article 39.

(c) “Date of Taking” means the date on which title to the whole or Substantially All of the Premises or a lesser portion thereof, as the case may be, shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

(d) “Condemnation Restoration” means a restoration of any portion of the Premises remaining after a Partial Taking and/or a restoration of any portion of the Premises which have been changed or altered as a result of a Temporary Taking, or as a result of any governmental action not constituting a Taking, but creating a right to compensation as provided in Section 13.04 so that such portions shall contain complete structures, in good condition and repair, consisting of self-contained architectural units and, to the extent practicable, of a size and condition of the Premises to operate the Facility as efficiently as existing immediately prior to the Date of Taking, or the date of such other governmental action.

### **Section 13.02. Permanent Taking.**

(a) Taking of the whole etc. If during the Term there shall be a Taking of the whole or Substantially All of the Premises (other than a Temporary Taking), the following consequences shall result:

(i) this Lease and the Term shall terminate and expire on the Date of Taking and (x) the Rental payable by Tenant hereunder shall be apportioned to the Date of Taking and all such Rental shall be paid to Landlord on the Date of Taking, and (y) Tenant shall retain title to the Equipment and may (but shall not be obligated to) remove all or some of the Equipment from the Premises; and

(ii) the award payable in respect of such Taking shall be paid as follows:

first, to Landlord and Tenant for costs and expenses incurred in connection with the Taking and the award;

second, to Tenant for the Improvements, either (x) the fair market value of the Improvements, or (y) if fewer than 48 months shall remain of the Term, as it may have been extended pursuant to a renewal of the Recycling Contract pursuant to Section 2.02 thereof, then the lesser of the fair market value of the Improvements and the Basic Termination Payment, and, in either case, such payment shall be reduced by the value of any Equipment removed from the Premises by Tenant in connection with such Taking; and

third, to Landlord in an amount equal to the value of the Premises as of the Date of Taking.

Any remaining amount of such award shall be paid to Landlord. Tenant shall have the right to claim separately its personal property, and moving and relocation costs for itself and any subtenant. Any award on account of Tenant's movable personal property shall be paid to Tenant.

(b) "Partial Taking." If there shall be a Taking of less than Substantially All of the Premises (other than a Temporary Taking) and provided Tenant can continue to operate the Facility for business as provided under the Recycling Contract in substantially the same manner, as decided by Tenant in its reasonable discretion, as prior to the Partial Taking, the following consequences shall result:

(i) this Lease and the Term shall continue without diminution of any of Tenant's obligations hereunder (other than to the extent required as a result of the Taking), except that this Lease shall terminate as to the portion of the Premises so taken, and from and after the Date of Taking, a pro rata amount of Annual Base Rent determined by Landlord and Tenant in good faith, on the basis of the area of such Partial Taking in relation to the whole area of the Premises, with appropriate recognition given to the extent that the portion so taken is land under water, shall abate for the remainder of the Term. If the abatement cannot be agreed to by Landlord and Tenant, the determination of such abatement shall be subject to arbitration in accordance with Article 39; and

(ii) the award or payment payable with respect to such Taking shall be paid and applied in accordance with the provisions of Section 13.02(a)(ii) above, except that any

portion of such award paid to effect a Condemnation Restoration shall be applied as set forth in Section 13.05 below; and

(iii) Tenant shall proceed with diligence (subject to Unavoidable Delays) to effect a Condemnation Restoration, in accordance with Section 13.05 of the remaining portion of the Premises not so taken, applying the Restoration Funds received by Tenant for such taking and such other funds of Tenant as may be necessary to pay in full the cost of Restoration.

**Section 13.03. Temporary Taking.**

(a) Not extending beyond Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period not extending beyond the Term (a “**Temporary Taking**”), the following consequences shall result:

(i) provided Tenant can continue to operate the Facility for business as provided under the Recycling Contract in substantially the same manner as prior to the Temporary Taking (in Tenant’s reasonable discretion), this Lease and the Term shall continue but without reduction or diminution of any of Tenant’s obligations hereunder (except to the extent required as a result of the Taking and except that during the Temporary Taking the Rental shall abate, pro rata, based on the portion of the Premises taken or the resulting decrease in the operation of the Facility);

(ii) if such Taking results in changes or alterations to the Premises or any part thereof, Tenant shall effect a Condemnation Restoration with respect thereto and Tenant shall be entitled to receive any award or payments for such use as provided in Section 13.03(a)(iii) below;

(iii) a portion of the award or payment payable with respect to such Taking shall be paid to Landlord in the amount of the Rental abatement provided under Section 13.03(a)(i) above, as and when the same would have become due and payable hereunder, and the balance shall be paid to Tenant.

(b) Extending Beyond Lease Term. If during the Term there shall be a Taking of the temporary use of the whole or Substantially All of the Premises or a lesser portion thereof for a period extending beyond the Term, then Section 13.02(a)(i) above shall be applicable and the amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 13.02(a)(ii) above.

**Section 13.04. Governmental Action Not Resulting in a Taking.** In case of any governmental action not resulting in a Taking but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental; provided, however, that if such governmental action results in changes or alterations of the Premises, then Tenant shall effect a Condemnation Restoration with respect thereto. Any award payable in the case of such governmental action shall be paid to and held by Tenant for the purpose of paying for the

cost of any Condemnation Restoration in accordance with Section 13.05(a) and any balance of the award remaining after completion of the Condemnation Restoration shall be disbursed to Tenant and Landlord in amounts based upon the value of their respective interests in the Premises at that time.

**Section 13.05. Condemnation Restoration Procedure.**

(a) Disbursement of Award. If Tenant shall be required by the terms hereof to effect a Condemnation Restoration, Tenant shall receive as much of the award payable in respect of a Taking as may be necessary to pay the cost of such Condemnation Restoration. Any balance of the award after completion of, and payment for, the Condemnation Restoration shall be paid and applied in accordance with the provisions of Section 13.02(a)(ii) above.

(b) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord shall be done in accordance with the provisions of Article 17 hereof. If the portion of the award paid to Tenant is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, then Tenant shall not be required to perform such unfunded Construction Work.

**Section 13.06. Collection of Awards.** Each of the Parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 13 and shall cooperate with each other to permit collection of the award.

**Section 13.07. Termination.** If there shall be a Taking of less than Substantially All of the Premises or a Temporary Taking such that Tenant cannot continue to operate the Facility for business as provided under the Recycling Contract in substantially the same manner as prior to such Taking (in Tenant's reasonable discretion), then Section 13.02(a)(i) above shall be applicable and the amount of the award or payment attributable to the period up to and including the last day of the Term shall be paid and applied in accordance with the provisions of Section 13.02(a)(ii) above. Notwithstanding anything to the contrary contained herein, the amount of any award paid to effect a Condemnation Restoration which shall not have been previously applied to that purpose or otherwise in accordance with the Lease shall become the property of and shall be paid over to Landlord if this Lease shall terminate for any reason prior to completion of said Condemnation Restoration in accordance with the provisions of this Article 13.

**Section 13.08. Allocation of Award.** Upon a Taking, the Parties shall make every effort to agree to an allocation of the award or payment as set forth in Section 13.02. If, after a reasonable time, the Parties cannot agree, the dispute shall be resolved in accordance with the arbitration procedure pursuant to Article 39 hereof.

**Section 13.09. Tenant's Appearance at Condemnation Proceedings.** Tenant shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials, and appeals in connection therewith. Landlord shall not settle, compromise or agree on any condemnation award, without Tenant's consent.

**Section 13.10. Waiver of Rights under Statute.** The existence of any present or future law or statute notwithstanding, except as otherwise provided herein, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any Taking except to the extent set forth herein. It is the intention of Landlord and Tenant that the provisions of this Article 13 shall constitute an “express agreement to the contrary” as provided in Section 227 of the Real Property Law and shall govern and control in lieu thereof.

**Section 13.11. Condemnation by Landlord.** In the event of a Temporary Taking or a Taking of all or Substantially All of the Premises by Landlord or any agency acting by, through or under Landlord or by any other governmental agency for a use or project with Landlord's active participation, then, in such event, if Tenant thereupon chooses to terminate the Recycling Contract pursuant to Sections 11.04-11.05 thereof, then in lieu of any other compensation, such termination will be treated as a Termination for City's Convenience under Section 11.01 of the Recycling Contract, and the sums payable thereunder shall be due.

## ARTICLE 14

### ASSIGNMENTS, SUBLEASES AND TRANSFERS

**Section 14.01. Landlord.** Landlord may transfer or assign its interests in the Premises or its interest under this Lease to any Person, in whole or in part, at any time in its sole discretion, provided that Tenant's rights hereunder are not disturbed, and that in no event shall the City, as Landlord, be released from its obligations under this Lease.

**Section 14.02. Tenant.** Tenant shall not undertake any of the following actions or permit any of the following occurrences without obtaining Landlord's prior written consent: (a) pledge, transfer or assign its interest, in whole or in part, in and to this Lease or the leasehold estate created hereby; (b) sublease, or grant, license or permit the use of the Premises, or any portion thereof, nor allow the Premises, or any portion thereof to be occupied by any Person other than Tenant whether by assignment, sublease, license or permit; or (c) merge or consolidate with any Person, or sell, assign, lease or otherwise dispose (whether in one transaction or in a series of transactions) of all or substantially all of its assets (whether now-owned or hereafter acquired) to any Person, or acquire all or substantially all of the assets of any Person. Landlord will not deny its consent to any transaction of the type listed above if such transaction or an integral part thereof has been consented to or is permitted under Section 10.06 or other applicable provision of the Recycling Contract. If Landlord consents to any of the foregoing occurrences, Landlord may impose any conditions to its consent that Landlord imposed to the transaction under the Recycling Contract, as well as a condition requiring that any Person that is a pledgee, transferee, assignee or subtenant of Tenant hereunder, or that occupies or makes use of the Premises, or that merges or consolidates with Tenant, or that acquires all or substantially all of the assets of Tenant, assume, perform and observe each and every term, covenant and condition on the part of Tenant to be performed or observed under this Lease and make all representations and warranties made by Tenant hereunder.

## ARTICLE 15

### REPAIRS, MAINTENANCE, ETC.

#### Section 15.01. Maintenance of the Premises, Etc.

(a) Except as otherwise provided in this Lease and subject to Section 3.05(c) above and Sections 15.01(b)-(d) below, Tenant, at its sole cost and expense, shall take good care of the Premises, including (i) all the buildings, including surfaces, roofs, and foundations appurtenant thereto, all real property and Equipment constituting the Facility, roadways, queuing or parking facilities, fencing, railings, sidewalks, grounds, fendering, rip rap, gutters and curbs within the Premises, and (ii) any water, sewer, gas and electric lines, pipes, mains, meters and connections within the Premises, except to the extent that the same were installed as Landlord's Work, and shall keep and maintain all of the foregoing in good and safe order and condition. Tenant shall neither commit nor suffer, and shall use all commercially reasonable efforts to prevent, waste, damage or injury to the Premises. All such repairs and maintenance (subject to the exception above stated) shall be made at no cost or expense to Landlord and shall be made in compliance with the Requirements, and all materials therefor shall be at least equal in quality and class to the original materials. As used in this Section, the term "**repairs**" shall include all necessary replacements, removals, alterations, and additions, and the obligation to maintain and/or repair shall include securing any necessary permits, approvals or licenses for such work.

(b) The presence of any Hazardous Substances at the Premises shall be governed by, and handled in accordance with, Section 3.05(c) above.

(c) Tenant shall not be responsible for any maintenance or repairs to any improvements constituting the Site Work, which shall be and remain the sole responsibility of Landlord, except that: (i) Tenant, at its sole cost and expense, will be responsible for maintenance and repair of the following elements of the Site Work: fenders, mooring hardware, pavement on the Premises, scales and scalehouse and components thereof as listed in Exhibit B to the Funding Agreement, and lights; and (ii) Tenant, at its sole cost and expense, will be responsible for future dredging at the Premises (i.e., after completion of the Site Work) if the need for such dredging arises within 10 years after the date of the post-dredging survey completed and submitted to Landlord following the dredging that is part of the Site Work; and (iii) Tenant will be responsible for future dredging at the Premises if the need for such dredging arises within 10 years after the 10-year period covered by Section 15.01(c)(ii) above, provided that Landlord shall be responsible for 50% of the costs and expenses of the first instance of dredging under this Section 15.01(c)(iii) and Tenant shall be entitled to abate payment of rent hereunder in an amount equal to Landlord's share of the costs and expenses of such dredging (in lieu of receiving funds from Landlord to pay Landlord's share of such costs and expenses).

(d) Landlord shall maintain and make needed repairs to any pipes or utilities, to the extent not obligated to be maintained by the utility service providers, which are located outside the Premises but provide service to the Premises, or which are located within the Premises and were installed as part of Landlord's Work. Landlord shall also maintain in good repair and keep open any access roads and streets which are adjacent to or are otherwise needed to access the Premises.

**Section 15.02. Removal of Equipment.** Tenant shall not, without the prior written consent of Landlord and DSNY, remove or dispose of any Equipment, unless such Equipment (a) is promptly replaced by Equipment of at least equal utility and quality (which replacement shall be at Tenant's sole cost and expense), or (b) is removed for repairs, cleaning or other servicing (which shall be at Tenant's sole cost), provided that Tenant reinstalls such Equipment on the Premises with reasonable diligence; provided that, subject to Section 18.06(a) below and notwithstanding the foregoing, upon notice to Landlord and DSNY, Tenant may remove or dispose of any Equipment, and shall not be required to replace any such Equipment, that has become obsolete, or that performed a function that has become obsolete, unnecessary or undesirable in connection with the operations at the Premises (which shall be determined in Tenant's sole reasonable judgment).

**Section 15.03. Free of Dirt, Snow, Etc.** Tenant shall keep the Premises clean and free from dirt, snow, ice, loose rubbish, obstructions and encumbrances including the roadways, sidewalks and grounds (not including properly placed Recyclable Material or other material integral to the operation at the Premises), and any parking facilities, railings, gutters, alleys, curbs, if any, or any other areas located within the Premises.

**Section 15.04. Intentionally omitted.**

**Section 15.05. Window Cleaning.** Tenant shall neither clean nor require, permit, suffer or allow any window in the Improvements to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of any Governmental Authority having jurisdiction.

**Section 15.06. Landlord's Right to Inspect.**

(a) At any time during the Term, upon reasonable prior notice to Tenant, Landlord and/or DSNY or their representatives or designees may, but shall have no obligation to, survey and inspect the condition of the Premises and make a report thereon. In connection with such inspection, Landlord and/or DSNY may, in their or its reasonable discretion, determine the necessity or the adequacy of repairs and maintenance at, to or of the Premises. In the case of an outgoing condition survey, Section 15.07 will govern.

(b) The survey and inspection report shall specify the maintenance required to keep and maintain the Premises and every part thereof in good working order and safe condition under this Article 15. A copy of said survey and inspection report shall be delivered to Tenant.

(c) Subject to Section 15.01 above, Tenant, promptly and with diligence, shall commence and continuously and diligently perform the maintenance specified in the survey and inspection report. The commencement of the maintenance specified in the report shall be deemed to have occurred upon the engagement of an architect, engineer or other design professional, as appropriate, to perform necessary design work in connection with any repairs and maintenance. Upon the timely completion of the design professional's design work, Tenant shall continuously and diligently prosecute the identified repairs and maintenance to completion. The failure of Landlord or DSNY to make the reports shall not limit, or be deemed a waiver of, Tenant's obligation to perform or observe, or to relieve Tenant of liability for failure to comply with any, of the terms, conditions and covenants of this Article 15.



**Section 15.07. Outgoing Condition Survey.**

(a) Within three months after the expiration or earlier termination of this Lease, Tenant shall cause to be presented to Landlord and DSNY an outgoing condition survey and inspection report based on a survey made within eight weeks after the Expiration Date. The engineer selected by Tenant to prepare such report shall be reasonably acceptable to Landlord and DSNY, and shall be accompanied on the inspection by an engineer or engineers selected and paid for by Landlord. Tenant shall bear the full cost and expense of preparation for the outgoing condition survey and inspection report by its engineer.

(b) Based upon the outgoing condition survey and inspection report, Landlord and/or DSNY shall notify Tenant of any repair work reasonably necessary to be performed by Tenant so that the Premises are in the condition they were required to be maintained by Section 15.01 of this Lease. Upon receipt thereof, Tenant shall perform or cause to be performed all work necessary to surrender the Premises as required in Section 30.01 of this Lease. Landlord and/or DSNY shall reasonably determine the necessity for and the adequacy of any necessary repairs, provided that, if Tenant disputes Landlord's and/or DSNY's determination regarding the necessity and adequacy of a repair, Landlord and Tenant shall submit their dispute to arbitration in accordance with Article 39.

**Section 15.08. Access of Landlord to Premises to Perform Obligations.** Landlord and/or DSNY upon reasonable prior notice to Tenant and provided Landlord and/or DSNY shall not interfere with Tenant's use of or access to the Premises, shall have access to the Premises for the purpose of performing the maintenance and repair obligations set forth in Sections 15.01(b)-(c) above and Tenant shall cooperate therewith. Landlord and DSNY shall use all reasonable efforts to minimize any interference with Tenant's use of the Premises and shall perform their obligations diligently and in a safe manner. During such periods of access, Tenant may accompany Landlord.

**Section 15.09. Access to Show Premises to Prospective Tenants.** Landlord and/or DSNY, upon reasonable prior notice to Tenant (and at times mutually agreeable) and provided neither Landlord nor DSNY shall interfere with Tenant's use of or access to the Premises, shall have the right to enter the Premises during regular business hours within two years prior to the expiration or earlier termination of this Lease for the purpose of showing to prospective tenants all or any part of the Premises. During such periods of access, Tenant may accompany Landlord and/or DSNY.

## ARTICLE 16

### CHANGES AND ALTERATIONS

**Section 16.01. Alterations and Landlord's Consent.** Except for Tenant's Work required by Article 18, Tenant shall make no changes, alterations, improvements, installations, additions or perform any Construction Work (collectively "**Alterations**") in or to the Premises, of any nature, without Landlord's and DSNY's prior written consent, which consent shall not be unreasonably withheld or delayed in accordance with the Review Standard set forth in Section

17.03(a). As used herein, the term "Alterations" shall not include the replacement or installation of Equipment or nonstructural alterations having a cost of less than \$250,000. Such consent shall be sought and obtained in connection with the review of plans and specifications pursuant to Section 17.03.

**Section 16.02. Conditions Applicable to Alterations.**

(a) Conditions to Alterations. Tenant, at its sole cost and expense, may make Alterations, provided that Tenant shall comply with the provisions of this Section and those of Article 17 and other applicable provisions of this Lease.

(b) Requirements Governing Alterations. Tenant shall, at its sole cost and expense, comply with all Requirements applicable to any Alteration undertaken by it, including, without limitation, obtaining, prior to commencement of any such Alteration, permits and licenses that may be required in connection with such Alteration, and, upon completion thereof, obtaining any requisite certificates, including, without limitation, certificates of completion or certificates of occupancy. Except with respect to any Alteration constituting compensable extra work under the Recycling Contract, all Alterations shall be at Tenant's sole cost and expense and Landlord shall not be required to pay for or contribute to the costs of any Alteration. Tenant will reimburse Landlord for any (i) costs and expenses incurred by Landlord in connection therewith, including fees of architects and engineers engaged by Landlord (other than employees of Landlord (including Lease Administrator) to review Tenant's plans and specifications, and verifying conformance therewith during, or following the completion of any such Alterations, and (ii) expenses incurred on account of any failure of Tenant to comply with any requirements of this Lease pertaining to the making of such Alterations.

(c) Landlord's Right to Inspect Alterations. See Section 17.07.

**Section 16.03. No Allowances**. In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of the Rent or any other charge, cost or expense payable by Tenant under this Lease, nor shall Tenant be released of or from any other obligations imposed upon Tenant under this Lease because of the construction of any Alteration.

**Section 16.04.** intentionally omitted.

**Section 16.05. Removal of Movable Personal Property**. Nothing in this Article 16 shall be construed to give Landlord title to or to prevent Tenant's removal of Tenant's property which does not constitute Equipment or obsolete property, including moveable office furniture and equipment, but upon removal of any such property from the Premises, Tenant shall immediately and at its expense, repair any damage to the Premises due to such removal. All property permitted or required to be removed by Tenant at the end of the Term remaining in the Premises after Tenant's removal shall be deemed abandoned and may, at the election of Landlord, either be retained as Landlord's property or removed from the Premises by Landlord, at Tenant's expense.

**Section 16.06. Sprinklers**. Anything elsewhere in this Lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or other insurance industry standard-setting organization or any bureau, department or official of the federal, State or City

government require the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, or other contents of the Premises, or for any other reason, or if any such sprinkler system installations, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by either the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature and in accordance with this Article 16.

## ARTICLE 17

### CONSTRUCTION WORK

**Section 17.01. Construction Work.** Tenant shall undertake all Construction Work, including that required in connection with the construction of the Tenant's Work but excluding that required in connection with the Site Work (which shall be governed by the Funding Agreement), in accordance with the requirements of this Article.

**Section 17.02. Definitions.** As used in this Lease, the following terms shall have the meanings set forth below:

"Approved Plans and Specifications" means, with respect to any Construction Work, plans and specifications for such Construction Work prepared by an Architect and approved by Landlord and DSNY in accordance with the provisions of Section 17.03.

"Final Completion" means, with respect to any Construction Work, that the Architect has determined that the following conditions have been satisfied: (a) such Construction Work, including all items on the Punch List with respect thereto, has been completed in accordance with the Approved Plans and Specifications therefor and all applicable Requirements; and (b) each Governmental Authority having jurisdiction over the Premises has issued any final certificate (or certificates) of occupancy or completion, or chairman's certificate with respect to waterfront zoning, as the case may be, required for such Construction Work.

"Substantial Completion" or "Substantially Complete(d)" means, with respect to any Construction Work, that the Architect has determined that the following conditions have been satisfied: (a) such Construction Work has been substantially completed in accordance with the Approved Plans and Specifications therefor and all applicable Requirements, except for minor repairs, corrections and adjustments of a "punch list" nature that can be completed promptly and with minimal interference to the use of such Construction Work by Tenant (the "Punch List") as contemplated under this Lease and the Recycling Contract; (b) subject to Landlord's completion of Landlord's Work, all utilities are connected, if and to the extent required to operate such Construction Work; (c) Tenant may occupy and use such Construction Work for the purposes contemplated by this Lease and the Recycling Contract; and (d) each

Governmental Authority having jurisdiction over the Premises has issued any temporary certificate (or certificates) of occupancy or completion, or chairman's certificate with respect to waterfront zoning, as the case may be, required for such Construction Work.

**Section 17.03. Plans and Specifications.**

(a) Satisfactory to Landlord and DSNY. Plans and specifications for all Construction Work, including the Construction Work required for Tenant's Work, shall be satisfactory to Landlord and DSNY, acting in their reasonable discretion, provided that (i) DSNY's rights of review and approval of plans and specifications as set forth herein shall be exercised only in relation to operational concerns deriving from the Recycling Contract, and in particular the ability of the Facility to meet the requirements and performance standards set forth therein and (ii) Landlord's right of review and approval of plans and specifications as set forth herein shall be exercised solely in relation to issues of life safety, code compliance and building practices (collectively, the "**Review Standard**").

(b) Submission of Preliminary Plans and Specifications. Promptly upon determining the need for any Construction Work, Tenant shall submit to Landlord and DSNY, for their prior review, preliminary plans and specifications for the proposed Construction Work ("**Preliminary Plans and Specifications**"). The submission of Preliminary Plans and Specifications for the Tenant's Work shall be made in accordance with Article 18.

(d) Review and Approval of Preliminary Plans and Specifications. Landlord and DSNY, acting in accordance with the provisions of subdivision (a) above, shall review the submitted Preliminary Plans and Specifications and shall notify Tenant of their respective approval or disapproval (with an explanation of the reasons for such disapproval) within 21 days after receipt thereof. Upon approval by Landlord and DSNY, the Preliminary Plans and Specifications shall constitute Approved Plans and Specifications. Failure by Landlord and DSNY to respond within the time period shall be deemed to constitute approval. However, if so directed by Landlord or DSNY, Tenant shall revise the Preliminary Plans and Specifications in accordance with the directions of Landlord and DSNY, and Tenant, within 15 days, shall submit revised Preliminary Plans and Specifications to Landlord and DSNY for their respective review and approval; except that (i) in the case of proposed changes relating to building practices, Tenant may submit an explanation to Landlord and DSNY as to why Landlord's or DSNY's proposed changes are not necessary (e.g., by provision of evidence that the Preliminary Plans and Specification are structurally or architecturally sound or safe, or technically correct, with a certification of a selected building practice by Tenant's architect or engineer, in which case Landlord's or DSNY's proposed changes shall not be required), and/or (ii) Tenant may submit an explanation to Landlord and DSNY as to why Landlord's or DSNY's proposed changes are beyond the scope of the Review Standard and thus within Tenant's sole discretion. A 15 day time limit for Landlord and DSNY action, and approval in the case of non-action, shall apply. A dispute concerning approval of the Preliminary Plans and Specifications shall be submitted to arbitration pursuant to Article 39; in such case all relevant time periods (i.e., commencement of construction) shall be stayed until five days from the notice of the decision.

(e) Modification of Approved Plans and Specifications. If Tenant desires to materially modify the Approved Plans and Specifications, Tenant shall submit the proposed modifications to Landlord and DSNY, and the procedures stated above shall apply.

(f) No Representations or Warranties. Except for acts of bad faith or intentional wrongdoing, Tenant agrees that neither Landlord, Lease Administrator nor DSNY shall incur any liability to any Person for any act or omission in connection with their respective reviews and approvals of the Plans and Specifications or any other document, or failure to review or approve the foregoing under this Lease, and neither Landlord's nor DSNY's approval of the Approved Plans and Specifications or any other document or Landlord's inspection of Construction Work to verify conformance with Tenant's plans and specifications therefor, shall be deemed to be (i) a representation, warranty or determination by Landlord, Lease Administrator or DSNY that the Approved Plans and Specifications comply with applicable Requirements, or are structurally or architecturally sound or safe, or technically correct, (ii) an opinion by either Landlord, Lease Administrator or DSNY that the Improvements constructed pursuant to the Approved Plans and Specifications are adequate or sufficient, (iii) a waiver of any of Landlord's or DSNY's rights, or (iv) a release of Tenant from any of its obligations under this Lease.

(g) Confidential Information. Landlord and DSNY acknowledge that any plans, drawings and specifications relating to the Facility may contain Tenant's trade secrets. Landlord and DSNY (and Tenant, as applicable) will comply with the provisions of Section 10.03 (Confidentiality; Publicity) of the Recycling Contract in connection with any such materials. The provisions of this Section shall survive the expiration of this Lease and the Recycling Contract.

**Section 17.04. Conditions Precedent to Tenant's Commencement of Construction Work.** Prior to the commencement of any Construction Work, including the construction of the Tenant's Work, Tenant shall comply with the following terms, covenants and conditions:

(a) Permits and Approvals. Tenant shall deliver to Landlord copies of all permits, consents, certificates and approvals of all Governmental Authorities required for the performance of such Construction Work (except those permits that are Landlord's responsibility to obtain as set forth in Exhibit E. At the request of Tenant, Landlord (acting in its proprietary capacity) shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by this Section 17.04 and any necessary utility easements, and shall not unreasonably withhold its consent if requested to join in any application required to obtain such permits, consents, certificates, approvals and easements made by Tenant.

(b) Insurance. Tenant shall deliver to Landlord copies of the certificates of insurance required in connection with the performance of Construction Work pursuant to the provisions of Section 10.01.

**Section 17.05. Performance of Construction Work.** All Construction Work shall be performed diligently and, subject to Unavoidable Delays, shall be completed in good and workmanlike manner and in accordance with the Approved Plans and Specifications, all applicable Requirements and this Lease. All materials and equipment utilized or furnished in

connection with any and all Construction Work shall be new (unless otherwise specified in the Approved Plans and Specifications) and in good condition, fully operational, without patent or latent defects, suitable for its intended purpose and shall comply with the requirements of the Approved Plans and Specifications. At all times during the performance of any Construction Work, Tenant shall maintain the Premises in a neat and orderly condition and shall protect the Premises against deterioration, loss, damage and theft.

**Section 17.06. Supervision of Architect.** All Construction Work shall be supervised by an Architect and all material changes to the Approved Plans and Specifications, shall be undertaken by an Architect.

**Section 17.07. Rights of Inspection.**

(a) Upon (except in emergencies) reasonable prior notice, Landlord, and/or DSNY and their representatives shall have the right from time to time to visit the Premises to observe the performance of Construction Work by Tenant for the purpose of ensuring that the Construction Work is undertaken in accordance with the Approved Plans and Specifications. Landlord and DSNY shall take reasonable steps to minimize interference with Tenant's construction work and operations when conducting such inspections and shall not require Tenant to uncover or dismantle completed work for purposes of such inspection. Nothing herein shall impose any responsibility upon Landlord or DSNY for any failure by Tenant to comply with any Requirements or observe any safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all respects with the Approved Plans and Specifications, applicable Requirements or the provisions of this Lease. The use of field personnel by Landlord and DSNY shall be at their sole cost and expense, unless the necessity therefor results from Tenant's negligence or willful misconduct.

(b) Tenant shall keep Landlord and DSNY fully informed of Tenant's progress in undertaking any Construction Work, including the construction of Tenant's Work. In furtherance of the foregoing, Tenant shall provide Landlord with such materials relating thereto as Landlord or DSNY may reasonably request.

**Section 17.08. Completion of Construction Work.**

(a) **Substantial Completion.** Upon Substantial Completion of any Construction Work, Tenant shall deliver to Landlord: (i) a certificate of the Architect, addressed to Landlord and Lease Administrator, certifying that Substantial Completion of such Construction Work has been achieved; and (ii) a copy of any temporary certificate of occupancy or completion, or chairman's certificate with respect to waterfront zoning, as the case may be, required for such Construction Work.

(b) **Final Completion.** Upon Final Completion of any Construction Work, Tenant shall deliver to Landlord: (i) a certificate of the Architect, addressed to Landlord and Lease Administrator, certifying that Final Completion of such Construction Work has been achieved; and (ii) a copy of any final certificate of occupancy or completion, or chairman's certificate with respect to waterfront zoning, as the case may be, required for such Construction Work. Within 180 days of the date of delivery of the Architect's Certificate with respect to Final

Completion of any Construction Work, Tenant shall deliver to Landlord a complete set of “as-built” plans and a survey for such Construction Work. Subject to Section 17.03(g) above, Landlord and Lease Administrator shall have an unrestricted, non-exclusive, irrevocable license, to the extent of Tenant's ownership or other right to grant such license, to use such “as built” plans and survey for any purpose related to Landlord's interest in the Premises without paying any additional cost or compensation therefor. Landlord, at all times during the Term, shall maintain the plans, specifications, and surveys at any time furnished by Tenant to Landlord in accordance with Section 10.03 of the Recycling Contract.

Section 17.09. Compliance with Requirements. Tenant assumes sole responsibility for compliance with all applicable Requirements in the performance of Construction Work, subject to Landlord's environmental and other obligations as provided in Sections 3.05(b)-(c) above. Tenant shall ensure that the Approved Plans and Specifications and any Construction Work undertaken at the Premises during the Term complies with all applicable Requirements.

Section 17.10. Risks of Loss. Tenant hereby assumes all risks of demolition, removal, and construction of the Improvements.

Section 17.11. Costs and Expenses. Subject to the terms of the Recycling Contract with respect to Change Orders for extra work, Tenant understands and agrees that all Improvements constructed or required to be constructed by Tenant, excluding the Site Work (which shall be governed by the Funding Agreement), will be designed, constructed, maintained, secured and insured entirely at Tenant's sole cost and expense without reimbursement or contribution by Landlord or Lease Administrator, or any credit or offset of any kind for any costs or expenses incurred by Tenant (except as otherwise expressly provided in this Lease or in the Recycling Contract). Tenant further covenants and agrees to pay and discharge all Impositions, and all municipal fees, charges, assessments and impositions assessed, charged or imposed in connection with the construction of all such Improvements.

Section 17.12. Title to the Improvements and Materials. Tenant agrees that, subject to this Lease, Landlord has all right, title and interest to the Premises, provided however that during the Term title to all Improvements constructed and paid for (without benefit of the Funding Agreement) by Tenant, including Tenant's Work, shall be and vest in Tenant and upon expiration of the Term title to all such Improvements shall immediately vest in Landlord. Tenant further agrees that all materials to be incorporated into the Improvements at the Premises and, as provided above, paid for by Tenant shall, immediately upon their purchase and at all times thereafter, constitute the property of Tenant, until the expiration of the Term, at which time all materials then-incorporated in the Improvements at the Premises will become the property of Landlord. Notwithstanding the foregoing, Tenant further understands and agrees that (a) Landlord shall not be liable in any manner for payment to, or for damage or risk of loss or otherwise by any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials, and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. The term “**materials**” as used in this Section shall include Equipment.

Section 17.13. Names of Contractors, Materialmen, Etc. Tenant shall furnish Landlord, within 30 days after Landlord's demand, with a list of all Persons performing any labor, or supplying any materials, in connection with any Construction Work costing in excess of 10% of the Replacement Value. The list shall state the name and address of each Person and in what capacity each Person is performing work at the Premises. All persons employed by Tenant with respect to Construction of the Facility shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 17.14. Construction Contract Provisions.

(a) Required Clauses. All written agreements to do any Construction Work ("**Construction Contracts**") shall include the following provisions:

(i) intentionally omitted.

(ii) "[Contractor]"/["Subcontractor"]/"Materialman"] hereby agrees that notwithstanding that ["contractor"]/"sub-contractor"]/"materialman"] performed work at or furnished any materials for the Premises (as such term is defined in the Lease) or any part thereof, neither Landlord nor Lease Administrator shall be liable in any manner for payment or otherwise to ["contractor"]/"subcontractor"]/"materialman"] in connection with the work performed at or materials furnished for the Premises.

(iii) "[Contractor]"/["Subcontractor"]/"Materialman"] hereby agrees to make available for inspection by ["contractor's"]/[Landlord and Lease Administrator, during reasonable business hours, ["subcontractor's"]/"materialman's"] books and records relating to Construction Work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) furnished for the Premises.

(iv) intentionally omitted.

(v) "Landlord is not a party to any Construction Agreement and will not in any way be responsible to any party for any claims of any nature whatsoever arising or which may arise from such ["agreement"] unless Landlord shall take over such ["agreement"] and then only as to claims arising after this ["agreement"] is so taken over."

## ARTICLE 18

### TENANT'S WORK/ DEVELOPMENT AND OPERATION OF FACILITY

Section 18.01. General. Tenant, in accordance with Article 17 and other applicable provisions of this Lease and using such contractors and subcontractors as, subject to the provisions of the above, it may choose, shall construct, equip, and operate the Facility on the Premises (such construction and equipping, "**Tenant's Work**"), including both the Acceptance Facility and the Processing Facility, substantially in accordance with the plan annexed hereto as Exhibit D and with the following provisions of this Article. Tenant's Work shall not include the Site Work, which shall be governed by the Funding Agreement.



**Section 18.02. Plans and Specifications.** Not later than nine months after the Effective Date, Tenant shall submit to Landlord and DSNY, for their respective prior review and approval, Preliminary Plans and Specifications (as defined in Section 17.03) for the Facility. The review and approval of the Preliminary Plans and Specifications for Tenant's Work shall be conducted by Landlord and DSNY in accordance with Section 17.03(c), provided however that Landlord and DSNY shall not deny their approval with respect to elements and details set forth in the site plans annexed as Exhibits A and D.

**Section 18.03. Site Delivery; Permits.** Landlord shall deliver the Premises to Tenant as provided in Section 3.02 and Section 3.05. Tenant or Landlord, as shown on Exhibit E, shall obtain the federal, state and local permits and approvals listed in Exhibit E within 12 months after the Effective Date or by the date set forth in such Exhibit E if later, in either case, subject to Unavoidable Delays.

**Section 18.04. Construction; Completion.**

(a) Tenant shall construct the Facility in accordance with the provisions of Article 17 and this Article 18. Subject to Landlord's and DSNY's approval of the Preliminary Plans and Specifications and subject to Unavoidable Delays, Tenant will commence construction on the Facility not later than 90 days after the later of (x) the date Tenant shall have obtained possession of the Premises or (y) the date all permits necessary for construction of the Site Work, Tenant's Work, and Landlord's Work have been obtained. For purposes hereof, construction will be deemed to have commenced when (i) all necessary site testing work shall have been substantially completed; (ii) on-site construction work with respect to the Facility shall have been commenced, and (iii) a non-cancelable, binding contract for material or on-site construction work for such facility in an amount in excess of \$500,000 shall have been entered into and a copy of such contract shall have been delivered to Landlord.

(b) The "**Facility Completion Date**" shall be the date that the following shall have occurred: (i) Substantial Completion of the Acceptance Facility; (ii) the approval of the Acceptance Facility pursuant to Section 18.05 below; (iii) the core and shell of the Processing Facility and Visitor Center have been built in accordance with the Approved Plans and Specifications; and (iv) each Governmental Authority having jurisdiction over the Premises has issued any temporary certificate (or certificates) of occupancy or completion required for the core and shell of the Processing Facility and Visitor Center (if such certificates are obtainable without installation of the Equipment necessary for the operation of the Processing Facility). The "**Processing Facility Completion Date**" shall be the date that the following shall have occurred: (x) Substantial Completion of the Processing Facility and Visitor Center; (y) the approval of the Processing Facility pursuant to Section 18.05 below.

(c) Tenant will prosecute such work with diligence and continuity and shall complete construction such that the Facility Completion Date occurs not later than a date (the "**Facility Completion Deadline**") which is 30 months after the date on which construction commences or is required to commence as provided above, whichever is earlier. Notwithstanding the foregoing, the time periods for permits provided in Exhibit E and Section 18.03 above and Contractor's time to commence construction and achieve the Facility Completion Date as provided above shall be extended by the length of any delay due to the

failure of an applicable governmental authority to issue in final form and without unreasonable conditions any of the permits and approvals listed in Exhibit E, provided that, in the case of the permits to be obtained by Tenant, Tenant has timely applied for and diligently pursued the issuance of such permits and approvals and has notified and consulted with Landlord and DSNY concerning the specific permit or permits in question and shall have taken all reasonable steps recommended by Landlord and DSNY in order to obtain the same. The date for the commencement of construction and Facility Completion Deadline shall be extended day for day for the occurrence of Unavoidable Delays subject, in the case of permits, to the conditions above. If the Facility Completion Date has not occurred on or before the Facility Completion Deadline (as it may have been extended), then Tenant shall pay Landlord as Liquidated Damages at the rate of \$1,000 per day from the date of such Deadline until the Facility Completion Date occurs.

(d) Following the Facility Completion Date, Tenant shall complete construction of the Facility such that the Processing Facility Completion Date occurs not later than a date (the "**Processing Facility Completion Deadline**") which is 6 months after the Facility Completion Date, provided that the Processing Facility Completion Deadline shall be extended day for day for the occurrence of Unavoidable Delays subject, in the case of permits, to the conditions in Section 18.04(c) above. If the Processing Facility Completion Date has not occurred on or before the Processing Facility Completion Deadline (as it may have been extended), then Tenant shall pay Landlord as Liquidated Damages at the rate of \$1,000 per day from the date of such Deadline until the Processing Facility Completion Date occurs.

**Section 18.05. DSNY Inspection and Approval; Commencement of Operations.**

In connection with Tenant's Work, when the Tenant determines that either the Acceptance Facility or the Processing Facility is Substantially Complete and capable of operating as contemplated by the Recycling Contract, Tenant shall so inform DSNY by written notice and shall include with such notice a certificate signed by an authorized officer of Tenant stating that Tenant currently possesses all permits, licenses, and authorizations required to operate the Acceptance Facility or the Processing Facility, as the case may be. Within 30 days after receiving such notice and as a condition of the placing of such Improvement into service, DSNY, acting reasonably, shall inspect and, if satisfactory, approve such Improvement, subject to the Punch List, for compliance with Approved Plans and Specifications for such Improvement and indicate in a written notice to Tenant either that the Facility is approved or the reasons why it is not approved. DSNY's failure to issue such notice within the period provided above shall constitute approval of the Acceptance Facility or the Processing Facility, as the case may be. Tenant may begin operations of the Acceptance Facility or the Processing Facility, as the case may be, at any time thereafter.

**Section 18.06. Operation.**

(a) Tenant shall operate and maintain the Facility as a maritime dependant Acceptance Facility and Processing Facility as provided in the Recycling Contract. At the commencement of MGP Processing operations at the Premises, the Facility shall be the primary Processing Facility for the totality of the MGP Recyclable Material delivered by DSNY under the Recycling Contract and, thereafter, Tenant will maintain the Facility, to the standards set forth in Article 15 above, in a condition capable of operating at no less than its operating capacity when it commenced MGP Processing operations as such primary Processing Facility.

Tenant shall commence operation of the Facility for the purposes set forth above not later than 60 days after the Facility Completion Date, and, consistent with stoppages permitted under the Recycling Contract, will continue such operation throughout the remainder of the Term. For purposes of this provision, operation shall be deemed to “commence” notwithstanding that initial operations may consist of a trial or shakedown period of partial or limited operation, such period not to exceed 60 days.

(b) Tenant shall cause the shipment of Processed Recyclables from (as defined in the Recycling Contract) from the Facility to be primarily by barge. Notwithstanding the foregoing, shipment methods may change over time by agreement between DSNY, Landlord and Tenant based on market conditions, changes in composition of the Processed Recyclables, and/or the preferred use of alternate transportation methods.

(c) If required under 6 NYCRR Part 360, Tenant shall effect the registration of the Facility as provided in 6 NYCRR §360-1.8(h) therein (the "**Part 360 Registration**") and shall fulfill all requirements within its control for the maintenance of the Part 360 Registration, including filing any annual reports required in connection therewith. The Part 360 Registration shall not be considered a certificate of occupancy or completion, as such terms are used in this Lease.

**Section 18.07. Visitor/Education Center.** Tenant shall build in accordance with plans therefor approved at the preliminary and 80% stage by DSNY, maintain, staff, and operate a visitor/education center (the “**Visitor Center**”) at the Facility accommodating school groups, members of the general public and others, in a safe environment. The Visitor Center shall be designed, built and staffed to be able to accommodate at least two school groups of approximately 32 students at a time. A fully enclosed walkway and viewing corridor will allow students and other visitors to watch recycling operations from a safe and controlled environment. Tenant will cause the exhibits, displays and programs of the Visitor Center to provide an educational experience for school groups of different ages, covering recycling in general, DSNY’s recycling program in particular and the recycling activities which occur within the Facility. Tenant will endeavor to cause the hours of operation, staffing and content of the Visitor Center to be maintained so that it serves as a suitable field trip destination for the City’s Department of Education. Tenant shall conduct visits to the Visitor Center at a reasonable frequency as demand warrants. The Tenant shall work with the City’s Department of Education and other appropriate educational institutions and not-for-profit organizations to encourage the use of the Visitor Center by New York City school groups.

**Section 18.08. Educational Tours.** At DSNY’s request, Tenant, at Tenant’s expense, shall conduct educational tours of the Facility for persons and groups, including officials from other cities and foreign visitors. In arranging these educational tours, DSNY will adhere to Tenant's need to protect proprietary processes. If Tenant conducts tours of the Facility for groups and personnel (exclusive of school groups and Tenant's vendors or customers) other than pursuant to specific DSNY request, then Tenant shall notify DSNY of the tour, including the persons or groups proposed to attend. Such notice may be by telephone or e-mail and shall be given to the DSNY Director of WPRR, and shall be given not less than 72 hours prior to such tour, to the extent practicable. Tenant shall consider in good faith any comments DSNY makes with respect to the tour. For school groups, Tenant shall provide DSNY with monthly reports.

With respect to any educational tour, Tenant shall provide the visitors, as needed, with essential safety gear, including hard hats with sanitary liners, safety vests, goggles and earplugs.

**Section 18.09. Project Sign; Ceremonies; Publicity.** Within 60 days after the Premises is delivered to Tenant by Landlord, Tenant, at its expense, shall furnish and install a project sign, the wording, design and location of which shall be reasonably satisfactory to Landlord and DSNY. Tenant shall arrange and shall invite Landlord and DSNY and their designee(s) to participate in groundbreaking and opening ceremonies to be held at such time and in such manner as Landlord and DSNY shall reasonably approve. In addition, Tenant shall consult with Landlord and DSNY concerning any publicity announcements to any news media prior to or upon completion or commencement of operation of the Facility.

## ARTICLE 19

### REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Subject to Landlord's obligations hereunder, including those set forth in Sections 3.05(b)-(c) and 15.01(b)-(c) above, Tenant shall comply with all Requirements applicable to the maintenance, management, use and operation of the Premises and Tenant's performance of its obligations hereunder, including, without limitation, any Construction Work, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use that may be made of the Premises, or any part thereof.

## ARTICLE 20

### DISCHARGE OF LIENS; BONDS

**Section 20.01. No Liens Are Permitted.** Tenant shall not create, cause to be created, nor suffer or permit to remain, any Lien, upon (a) this Lease, the leasehold estate created hereby, the income therefrom, the Premises, or any part of the Premises, (b) the Improvements (c) any assets of, or funds appropriated to, Landlord, Lease Administrator, EDC or Apple, or (d) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises, or any part thereof, might be impaired, except those resulting from Tenant's recording of the Lease (which Landlord acknowledges Tenant may do). Notwithstanding the foregoing, Tenant shall have the right to lease or finance any moveable equipment not constituting Equipment under this Lease.

**Section 20.02. Discharge of Liens.**

(a) Without limiting the generality of the foregoing, if any mechanic's, laborer's, vendor's, material provider's or similar statutory Lien is filed against the Premises, or any part thereof, or this Lease or leasehold estate, or the income therefrom, or if any public improvement Lien created, or caused or suffered to be created, by Tenant shall be filed against

any assets of, or funds appropriated to, Landlord, Lease Administrator EDC or Apple, then Tenant, within 30 days after receiving notice of the filing of such Lien, shall cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

(b) Notwithstanding the requirements of Section 20.02(a), Tenant shall not be required to discharge a Lien if Tenant shall have (i) furnished Landlord with a cash deposit, bond or other security reasonably satisfactory to Landlord in an amount sufficient to pay the Lien with interest and penalties, and (ii) brought an appropriate proceeding to discharge such Lien and prosecutes such proceeding with diligence and continuity; except that, if despite Tenant's efforts to seek discharge of the Lien, Landlord reasonably believes such Lien is about to be foreclosed and so notifies Tenant, or if the Premises or any part thereof is in imminent danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided, by reason of failure to vacate or discharge such Lien, Tenant shall immediately cause such Lien to be discharged of record, or Landlord may use the security furnished by Tenant to it in order to so discharge the Lien for which such security was given.

Section 20.03. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord or Lease Administrator, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or material provider for the performance of any labor, or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises, or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any Lien against the Premises, this Lease, the leasehold estate created hereby or any part of any of the foregoing, or any income therefrom, or against assets of, or funds appropriated to, Landlord, Lease Administrator, EDC or Apple.

## ARTICLE 21

### REPRESENTATIONS AND WARRANTIES OF TENANT AND LANDLORD

Tenant represents and warrants to Landlord as follows:

#### Section 21.01. Organization, Good Standing; Membership.

(a) Except if Tenant has notified Landlord otherwise, Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required.

(b) As of the date hereof, the sole member of Tenant is Simsmetal East LLC, a Delaware limited liability company.

**Section 21.02. Power and Authority; No Conflicts.** The execution, delivery and performance by Tenant of this Lease have been duly authorized by all necessary action of its partners and do not and will not: (a) require any consent or approval of the Persons owning and controlling its members which has not already been obtained; (b) contravene its operating agreement; (c) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Tenant, (d) result in a breach of, or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Tenant or its parent entities is a party or by which it or its properties may be bound or affected; (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by Tenant; or (f) cause Tenant to be in default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

**Section 21.03. Legally Enforceable Agreement.** This Lease is a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

**Section 21.04. Litigation.** As of the date hereof, there are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against or affecting Tenant before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of Tenant, or the ability of Tenant to perform its obligations under this Lease.

**Section 21.05. Taxes.** Tenant has filed all tax (federal, state and local) returns required to be filed and has paid all taxes, assessments and governmental charges and levies due, including interest and penalties. As of the date hereof, Tenant has no knowledge of any claims for taxes due and unpaid which might become a Lien upon any of its assets.

**Section 21.06. Operation of Business; Compliance with Laws.** Except with respect to the governmental permits set forth in Exhibit E which have not yet been obtained, Tenant possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted, and Tenant is not in violation of any valid rights of others with respect to any of the foregoing. Tenant is in compliance in all respects with all material Requirements.

**Section 21.07. No Broker.** Tenant has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby. This representation shall survive the expiration or earlier termination of this Lease.

**Section 21.08. No Prohibited Persons.** As of the date hereof, none of the members, shareholders, partners or officers of Tenant, or of any entity having an ownership interest in Tenant or in such other entity is a Prohibited Person, except that Tenant makes no representation as to minority shareholders of any corporation which is listed on any national or regional stock exchange or is listed in the NASDAQ system.

**Section 21.09. No Undue Influence.** No officer, agent, employee or representative of Landlord, DSNY, Lease Administrator, EDC or Apple has received any payment or other consideration in connection with this Lease, and no officer, agent, employee or representative of Landlord, DSNY, Lease Administrator, EDC or Apple has any interest, direct or indirect in Tenant, this Lease, or the proceeds thereof. Tenant acknowledges that Landlord is relying on the warranty and representation contained in this Section 21.09 and that Landlord would not enter into this Lease absent the same. If the facts hereby warranted and represented prove to be incorrect, then Landlord shall have the right to terminate this Lease upon 24 hours' notice to Tenant and to rescind this transaction in all respects and Tenant shall not make claim for, or be entitled to recover, any sum or sums under this Lease, other than amounts that may be due under Section 11.06.3 of the Recycling Contract.

Landlord represents and warrants to Tenant as follows:

**Section 21.10. intentionally omitted.**

**Section 21.11. Power and Authority; No Conflicts.** The execution, delivery and performance by Landlord of this Lease have been duly authorized by all necessary action.

**Section 21.12. Legally Enforceable Agreement.** This Lease is a legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms.

**Section 21.13. Litigation.** As of the date hereof, there are no actions, suits or proceedings pending or, to the knowledge of Landlord, threatened against or affecting Landlord before any court, Governmental Authority or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of Landlord to perform its obligations under this Lease.

**Section 21.14. Title.** Landlord represents that it owns fee simple title to the Premises, free and clear of all matters other than the Title Matters listed on Exhibit B hereto.

**Section 21.15. Use.** Landlord makes the representations as to the permitted use of the Premises set forth in Section 9.04.

## ARTICLE 22

### LIMITATION ON LIABILITY

**Section 22.01. Landlord not Liable for Injury or Damage, Etc.** Except as may be otherwise provided in this Lease or in the Recycling Contract:

(a) From and after the Lease Commencement Date neither Landlord, Lease Administrator nor Apple shall be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises, or to any property belonging to Tenant or to any other Person, that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises, or that may arise from any other cause whatsoever, unless, and only to the extent that, such injury or damage is

determined to be caused by Landlord, Lease Administrator or Apple, or their respective agents', employees', Invitees', or contractors' breach of this Lease or their respective violations of law or tortious acts or omissions;

(b) From and after the Lease Commencement Date neither Landlord, Lease Administrator nor Apple shall be liable to Tenant for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance after the Commencement Date, or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or body of water under or adjacent to the Premises, or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent that such failure, injury or damage is caused by Landlord, Lease Administrator or Apple, or their respective agents', employees' or contractors' negligence, or intentional tortious acts or its failure to comply with this Lease.

**Section 22.02. No Personal Liability.** None of the elected officials, directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord, Lease Administrator or Apple shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder. None of the directors, officers, members, partners, joint venturers, principals, shareholders, employees, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Landlord available hereunder.

**Section 22.03. Obligations of Tenant.** The aggregate obligations of Tenant under this Lease are subject to the limitations set forth in Section 11.05.7 of the Recycling Contract.

**Section 22.04. Governs Lease.** The provisions of this Article 22 shall govern every other provision of this Lease. The absence of explicit reference to this Article 22 in any particular provision of this Lease shall not be construed to diminish the application of this Article 22 to such provision. This Article 22 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 23

### INDEMNIFICATION

**Section 23.01. Obligation to Protect Landlord, Lease Administrator and Apple against Liability.** Subject to Landlord's obligations in Section 15.01 above, Tenant is solely responsible for the security of the Premises (but not for Landlord's, DSNY's Apple's or Lease Administrator's (or their representatives', agents' or Invitees') access to the Premises) and Tenant's operations on, above or about the Premises and shall manage and operate the same as to avoid bodily injury and/or property damage. Tenant and any Tenant Invitee shall not perform any act, or do anything, or permit that any act be performed or thing done at the Premises, or any



portion thereof, except as contemplated or required hereby that subjects Landlord, Lease Administrator or Apple to any liability for injury to any Person or damage to property for any reason whatsoever, including, without limitation, by reason of any violation of any Requirement, and Tenant shall exercise such control over the Premises so as to fully defend, preserve and protect Landlord, Lease Administrator and Apple against any such liability.

**Section 23.02. Obligation to Indemnify.** To the maximum extent permitted by law, each Party (or, with respect to (g), (h) and (j) below, Tenant) (an “**Indemnifying Party**”) covenants that it will protect, defend, indemnify, and hold the other Party and its Affiliates, officers, directors, trustees, employees, agents, servants and contractors (each an “**Indemnified Party**”) harmless from and against all Losses for:

(a) Accidents, Injury to Person or Property. Personal injury to, or death of, any person or persons, or loss or damage to property, including property of the other Party (including the Site Work or the Improvements), to the extent caused by one or more negligent or intentionally wrongful acts or omissions of the Indemnifying Party, its officers, trustees, employees, agents, servants, contractors or Invitees (other than the other Party to this Lease) or the breach by the Indemnifying Party of any of its representations, warranties or agreements contained in this Lease;

(b) Penalties. Any penalties or fines that are imposed upon it for reasons attributable to the Indemnifying Party’s failure to perform according to the terms of this Lease;

(c) Construction Work. Any Construction Work or act done in, on, or about the Premises or any part thereof by or on behalf of the Indemnifying Party;

(d) Control. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises, or any part thereof, including, without limitation, any violations caused by the Indemnifying Party which are imposed by any Governmental Authorities in respect of any of the foregoing;

(e) Lien, Encumbrance or Claim Against Premises or Funds. Any Lien, encumbrance or claim that may be alleged to have imposed or arisen against or on the Premises or any assets or funds of the Indemnified Party or any liability that may be asserted against the Indemnified Party with respect thereto;

(f) Other Agreements. Any failure on the part of the Indemnifying Party to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Recycling Contract, the Funding Agreement, or any other contract or agreement affecting the Premises, on the part of the Indemnifying Party to be kept, observed or performed;

(g) Execution, Delivery and Recording Fees. Any recording fees or transfer tax, if any, attributable to the execution, delivery or recording of this Lease or a memorandum hereof;

(h) Contest and Proceedings. With respect to Landlord in its proprietary capacity, any contest or proceeding brought by Tenant, or permitted to be brought by Tenant pursuant to Article 38;

(i) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted for the Indemnifying Party in connection with this Lease or the transactions contemplated by this Lease; or

(j) Hazardous Substances. Subject to the provisions of Section 3.05(b) and Landlord's obligations elsewhere in this Lease, any claim arising out of, or in any way related to the presence, storage, transportation, disposal, release or threatened release of any Hazardous Substances over, under, in, on, from or affecting the Premises, or any persons, real property, personal property, or natural substances thereon or affected thereby during the Term of this Lease caused by Tenant or Tenant's Invitees, including any such liability, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses imposed upon, incurred by or asserted against Landlord, Lease Administrator or Apple under CERCLA.

**Section 23.03. Third Party Liability.** A Party and its Affiliates, officers, directors, trustees, employees, agents, servants and contractors will be entitled to indemnity under this Article 23 for Losses arising from any allegations by a third party of any circumstance for which, if proven, such Party would be entitled to indemnity under this section from the other Party.

**Section 23.04. Contractual Liability.** The obligations of Landlord and Tenant under this Article 23 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting the Premises.

**Section 23.05. Indemnification Procedure.** All claims for indemnity under this Article shall only be made in accordance with the Indemnification Procedure.

**Section 23.06. Survival.** The provisions of this Article 23 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 24

### LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

**Section 24.01. Landlord's Right to Perform.** If at any time Tenant shall fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 10, or to make perform any other act on its part to be made or performed hereunder resulting in an unsafe condition at the Premises, then, upon not less than 20 days prior written notice to Tenant (or, in case of any emergency, on such notice as may be reasonable under the circumstances), and without either releasing Tenant from any obligation of Tenant hereunder, or waiving Landlord's right to terminate this Lease upon an Event of Default in accordance with the provisions hereof, or any other right or remedy available to Landlord hereunder, at law or at equity, Landlord may (but shall not be required to):

(a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 10; or

(b) undertake such maintenance, repair or other actions as required to eliminate or protect the public from any unsafe condition at the Premises.

**Section 24.02. Amounts Paid by Landlord are Rental.** All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act shall bear interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment, or incurring each such cost and expense. All such sums and interest thereon shall be paid by Tenant or caused to be paid by Tenant to Landlord, upon demand, but in no event not later than the first day of the month following the giving of any notice related thereto.

**Section 24.03. Proof of Damages.** Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

**Section 24.04. intentionally omitted.**

**Section 24.05. Discharge of Liens.** If Tenant shall fail to cause any mechanic's, laborer's, vendor's, material provider's or similar statutory Lien or any public improvement Lien to be discharged in accordance with the provisions of Article 20, upon 20 days prior written notice to Tenant Landlord may, but shall not be obligated to, discharge such Lien of record either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such Lien by the lienor and the payment of the amount of the judgment in favor of the lienor with interest, costs and allowances. Any liability, cost or expense (including, without limitation, court costs and reasonable attorney's fees and disbursements) incurred by Landlord, Lease Administrator or Apple in connection with the discharge of any such Lien shall constitute Rental and shall be payable by Tenant upon demand therefor by either Landlord or Lease Administrator.

**Section 24.06. Waiver, Release and Assumption of Obligations.** Landlord's payment or performance pursuant to the provisions of this Article shall not constitute, nor be deemed to constitute (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease and/or to take such other action as may be permissible under law or hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

## ARTICLE 25

### NO SUBORDINATION

Landlord's interest in the Premises and in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage on Tenant's interest now or hereafter existing, (b) any other Liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby, or (c) any sublease, Liens or encumbrances now or hereafter placed on any subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created hereby and all rights of Tenant hereunder are and shall be subject to the Title Matters.

## ARTICLE 26

### RECORDS; INSPECTION AND AUDIT; EMPLOYMENT REPORT

#### Section 26.01. General.

(a) Maintenance of Books and Records. Tenant shall keep and maintain books and records in accordance with the requirements of Article 8 of the Recycling Contract.

(b) Inspection and Audits of Books and Records. Landlord, Lease Administrator, the Comptroller and their agents or representatives shall have the right from time to time during regular business hours, upon 24 hours notice, to inspect and audit Tenant's books and records, and all other papers and files of Tenant, relating in any manner to Tenant's compliance with any provision of this Lease or any other agreement related to the Premises. Tenant shall produce all such books, records, papers and files, upon request of Landlord, the Comptroller or their agents and representatives for inspection at the Premises or at locations permitted for the maintenance of records under Section 8.01 of the Recycling Contract. Subject to applicable law, all information obtained from Tenant's books, records, papers and files shall be held in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease.

(c) Survival. The obligations of Tenant under this Section 26.01 shall survive the expiration or earlier termination of this Lease.

#### Section 26.02. Employment (Local Law 69/48) Reports.

(a) On or before the date hereof, Tenant, if it has not already done so, shall complete and return to EDC a questionnaire (the "Questionnaire") in the form annexed hereto as Exhibit F asking, in substance, how many and what types of jobs Tenant in good faith estimates will be created and retained with regard to the Premises when developed as contemplated by this Lease. Tenant agrees, on behalf of itself and its successors and assigns, that thereafter, with regard to each period beginning on July 1 and ending on June 30, from and after the Lease Commencement Date until the first June 30 falling after the date that is seven years after the Lease Commencement Date (such periods, collectively, the "Reporting Period"), unless waived by EDC, Tenant will submit to EDC, by August 1, on an annual basis, a report (on

a form presented to it by EDC) of the number of jobs created and retained at the Premises during the previous July 1 - June 30 period relating to Tenant's and its successors' and assigns' own employees at the Premises, and the employees of any entity affiliated therewith, signed by an officer of Tenant, and the attachments required by such form. If Tenant should sublease all or any portion of the Premises, then Tenant shall take all appropriate measures, including such as EDC may direct, to insure that employee information with respect to any such subtenant is furnished to EDC in a manner equivalent to that provided above.

(b) Tenant on behalf of itself, its successors and assigns further agrees that Tenant (and its successors and assigns) shall receive and in good faith consider such proposals as the City and City-related entities may make with regard to jobs Tenant (or its successors or assigns) will seek to fill in relation to its activities in or concerning the Premises and provide the City and such entities with the opportunity (I) to refer candidates who are City residents having the requisite experience for the positions in question, and/or (II) to create a program to train City residents for those jobs and (B) with regard to each July 1 - June 30 period that falls in whole or in part within the Reporting Period, report to EDC, by August 1, on an annual basis, with regard to the previous July 1 - June 30 period, its response to any proposals, job referrals and training programs made and/or created by the City and/or City-related entities pursuant to this subsection (b).

(c) Tenant acknowledges that accurate and complete information concerning employment opportunities generated at the Premises is of material concern to Landlord and agrees that Tenant's covenants in this Section 26.02 are a material inducement for Landlord to enter into this Lease.

## ARTICLE 27

### NON - DISCRIMINATION

**Section 27.01.** E.O. 50. Tenant shall be subject to the requirements of Executive Order No. 50 (April 25, 1980) as amended ("E.O. 50"), or any successor thereto, as long as E.O. 50 or any successor thereto, in whatever form and whenever issued adopted or enacted, is in force, in whole or in part, and the regulations promulgated thereunder (the "Regulations") and orders ("Orders") of the Director (the "Director") of the Division of Labor Services within the City's Department of Small Business Services (the "Division") (subject to any applicable future amendments to E.O. 50, the Regulations, and/or Orders), and Tenant shall be bound for such period or periods by the following requirements, which will be deemed amended by such applicable future amendments.

#### **Section 27.02.** No Unlawful Discrimination.

(a) Tenant will not engage in any unlawful discrimination against any employee or job applicant because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship status with respect to all employment decisions including, but not limited to, recruitment, advertising, hiring, compensation, fringe benefits, leave, promotion, upgrading, demotion, downgrading, transfer,

training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

(b) Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship;

(c) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship, or (ii) that Tenant is an equal opportunity employer;

(d) Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services, New York City Department of Small Business Services, 110 William Street, New York, NY 10038, Attn: General Counsel's Office, (212) 513-6323";

(e) Tenant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement of understanding, written notification of its equal employment opportunity commitments under E.O. 50, the Regulations, Orders and all employment programs and other agreements between Tenant and the Division (collectively, "Division of Labor Services Agreements");

(f) Tenant will, before any contract for Construction Work in the amount of \$1,000,000 or more is awarded, furnish or cause its contractor to furnish an Employment Report to the Division in the form annexed hereto as Exhibit G, entitled ("**E.O. 50 Employment Report**"), as it may be amended from time to time by the Division, and obtain from the Division written approval of the proposed contractor(s). After Construction Work commences, Tenant will submit all information and reports required by E.O. 50, the Regulations and Orders, including but not limited to certified payrolls covering Tenant's construction work force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Division may require;

(g) Tenant will permit the Division to have access to all relevant books, records, accounts and work sites, to investigate compliance with this Lease and E.O. 50, the Regulations, Orders, and all other Division of Labor Services Agreements;

(h) Tenant will refrain from entering into any contract, other written or oral agreement or contract modification subject to E.O. 50 submission requirements with a contractor who has not been approved by the Division;

(i) Tenant, as “**Owner**”(as such term is used in AIA Form 201), will include, or cause to be included, the following provisions and such additional language as the Division may in writing require in every Construction Contract of \$1,000,000 or more or subcontract for Construction Work of \$750,000 or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor and subcontractor to provide access to books, records and the work site(s) and to submit the information required by the Division and/or Landlord, and will cause each contractor or subcontractor engaged in Construction Work to comply with the following provisions. Landlord reserves the right to inspect all contracts and subcontracts prior to execution to ensure that the required language is included:

“This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980), as amended (“**E.O. 50**”) and the regulations promulgated thereunder (“**Regulations**”), and orders (“**Orders**”) of the Director (“**Director**”) of the Division of Labor Services (“**Division**”) (collectively, “**E.O. 50 Requirements**”). The Division may examine this contract to ensure that these provisions are included. By signing this contract, contractor agrees:

(A) that it

(1) will not engage in any unlawful discrimination against any employee or job applicant because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship with respect to all employment decisions, including, but not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner’s, partner’s or shareholder’s actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship, or (ii) that contractor is an equal opportunity employer;

(4) will inform its employees in writing that it “treats all employees and job applicants without unlawful discrimination as to actual or perceived race, creed, color, national origin, gender, age, disability, marital status, sexual orientation, alienage or citizenship in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment,” and that “[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services, New York City Department of Small Business Services, 110 William Street, New York, NY 10038, Attn: General Counsel’s Office, (212) 513-6323.”

(5) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under E.O. 50 Requirements, and all employment programs and other agreements between the contractor and the Division (collectively, “**Division of Labor Services Agreements**”);

(6) will furnish before any Construction Work commences an Employment Report, copies of which are available upon request from Owner. After Construction Work commences, contractor will submit all information and reports required by E.O. 50 Requirements, including but not limited to certified payrolls covering contractor’s construction work force and additional information required pursuant to a Conditional Certificate of Compliance, employment program or other Agreement, in such frequency and format as the Division may require;

(7) will permit the Division to have access to all relevant books, records, accounts and work sites, to investigate compliance with this contract and E.O. 50 Requirements and Division of Labor Services Agreements.



(B) Contractor's failure to file timely, complete and accurate Employment Reports or other information required by E.O. 50 Requirements and any other Agreement (or other document(s) required by a federal or state agency providing assistance to the Construction Work) or contractor's violation of the nondiscrimination clauses (A)(1) through (7) of this Contract, contractor's failure to comply with an employment program or other Agreement and/or contractor's failure to cause compliance on the part of a subcontractor as provided below shall constitute a material breach of this contract. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with E.O. 50 Requirements, shall excuse contractor's obligations to abide by E.O. 50 Requirements. If the Division's staff, as a result either of the Division's review of or a complaint by a job applicant, employee or former employee, finds that contractor may not be in compliance, the Division's staff and the contractor will meet to negotiate an employment program of corrective actions to achieve contractor's full compliance with this contract and E.O. 50 Requirements. If contractor fails or refuses either to meet, to agree to take necessary corrective measures, or to implement agreed corrective measures, this contract or any portion hereof may be disapproved, cancelled, terminated or suspended, or liquidated damages may be assessed by Owner (or the general contractor, construction manager, prime contractor or their subcontractors, as the case may be) or payments thereon may be withheld and such other sanctions may be imposed and remedies invoked in accordance with law. Liquidated damages for contractor's failure to comply with the equal opportunity requirements hereunder will be the amount of wages and fringe benefits that would have been paid to the parties that should have been employed, as determined by the Division or Owner. Nothing hereinbefore stated in these requirements shall limit the Owner or the Division from pursuing any other remedy available by law to enforce the E.O. 50 Requirements or Division of Labor Services Agreements as the Director may order.

(C) Contractor agrees to include the provisions of the foregoing paragraphs (A) and (B) in every subcontract of \$750,000 or more to which it becomes a party. Contractor agrees, and will state in every subcontract, that contractor will take such action with respect to the subcontract as Owner or the Director may direct, including canceling, suspending or terminating the subcontract and/or stopping payments under the subcontract, to enforce the E.O. 50 Requirements and Division of Labor Services Agreements.

(D) Contractor further agrees that it will refrain from entering into any subcontract, written or oral agreement or contract modification subject to E.O. 50 submission requirements with a subcontractor who has not been approved by the Division."

Section 27.03. Intentionally omitted.

Section 27.04. Default. Tenant's failure (a) to file or cause the timely filing of complete and accurate Employment Reports or other information required by E.O. 50, the Regulations, Orders, or other Division of Labor Services Agreements (or other document(s) required by a federal or state agency providing assistance to Construction Work) or (b) to comply with nondiscrimination clauses (a) through (h) of Section 27.02 or (c) to comply with the nondiscrimination provisions of Section 27.02(i), or to enforce the requirements imposed on contractors or subcontractors by such clauses at the direction of the Division, shall constitute a material breach of this Lease. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with E.O. 50 shall excuse Tenant's obligations to abide by E.O. 50 and the Regulations or its obligations to include and enforce the contractor clauses of Section 27.02 hereof. If Landlord, acting through the Division, as a result either of the Division's review or the complaint by a job applicant, employee or former employee, finds that Tenant or a contractor or subcontractor may not be in compliance, Landlord, acting through the Division, may notify Tenant (and the contractor or subcontractor, as the case may be) describing the extent of non-compliance. If the non-compliance is not remedied within thirty (30) days of Tenant's receipt of notice, the Division shall request a meeting with Tenant ( and with the contractor or subcontractor, as appropriate) to negotiate an employment program of corrective actions to achieve Tenant's full compliance with these clauses, E.O. 50, the Regulations and Orders. If Tenant fails or refuses either to meet, to agree to take necessary corrective measures, to implement agreed corrective measures, or to enforce contractors' obligations pursuant to the contract provisions set forth in Section 27.02(i) and to cause contractors to enforce subcontractors' obligations thereunder, Landlord, acting through the Director may (i) require Tenant to take corrective measures pursuant to an employment program, (ii) assess Tenant as liquidated damages an amount equal to the wages and fringe benefits that would have been paid to the parties that should have been employed pursuant to the non-discrimination clauses of this Lease or (iii) impose such other sanctions as may be imposed and remedies invoked in accordance with law. Nothing hereinbefore stated in these requirements shall limit Landlord from pursuing any other remedy available by law to enforce the E.O. 50 Requirements and Division of Labor Services Agreements or from seeking additional damages.

Section 27.05. Compliance with Revised Program. In the event that a "Pre-apprenticeship" or similar program is developed after the date of this Lease by the Division in consultation with New York State and City agencies and construction industry representatives, to provide opportunities for and recruitment of economically disadvantaged persons, women and minorities in the construction trades (a "**Revised Program**"), Tenant shall also implement and comply with the requirements of such Revised Program if, as and when such requirements are incorporated into the provisions of Executive Order No. 50 and/or the regulations in connection therewith.

## ARTICLE 28

### INVESTIGATIONS; REFUSAL TO TESTIFY

**Section 28.01. Cooperation.** Tenant shall cooperate fully with any investigation, audit, or inquiry conducted by a Governmental Authority or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.

**Section 28.02. Hearings.**

(a) If any person has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding and still refuses to testify before a grand jury or other Governmental Authority or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with Landlord, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, EDC or any local development organization, or any public benefit corporation organized under the laws of the State; or

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or the performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, EDC or any local development corporation;

Then, the Commissioner of Small Business Services (“**Commissioner**”), or the agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license may convene a hearing, upon not less than five days’ written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

**Section 28.03. Adjournments of Hearing, Etc.** If any non-governmental party to the hearing requests an adjournment, the Commissioner or the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Section 28.05 below without Landlord incurring any penalty or damages for delay or otherwise.

**Section 28.04. Penalties.** The penalties that may attach after the final determination by the Commissioner or agency head may include, but shall not exceed:

(a) The disqualification for a period not to exceed five years from the date of any adverse determination for any person or any entity of which such person was a member, shareholder, officer, director, employee or agent at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from Landlord; and/or

(b) The cancellation or termination of any and all existing City or EDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or EDC incurring any penalty or damages on account of such cancellation or termination.

**Section 28.05. Criteria for Determination.** The Commissioner or agency head shall consider or address in reaching his or her other determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information which may be relevant and appropriate.

(a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in a party or entity subject to penalties under Section 28.04 above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 28.02 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the adverse impact such a penalty would have on such person or entity.

**Section 28.06. Definitions.** For the purposes of this Article 28, the following terms will have the meanings set forth below. Capitalized terms utilized, but not otherwise defined below, will have the meanings assigned to such terms elsewhere in this Lease.

(a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term “**person**” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term “**entity**” as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(d) The term “**member**” as used herein shall be defined as any person associated with any other person or entity as a partner, director, officer, principal or employee.

**Section 28.07. Failure to Report Solicitations.** In addition to, and notwithstanding any other provision of this Lease, the Commissioner or the agency head may, at his or her discretion, terminate this Lease upon 24 hours’ written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City, Lease Administrator, Apple or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant, or affecting the performance of this Lease.

## ARTICLE 29

### EVENTS OF DEFAULT, REMEDIES, ETC.

**Section 29.01. Events of Default.** Each of the following events shall be an “**Event of Default**” hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental (including any payment of Annual Base Rent or Impositions) when due hereunder and such failure shall continue for a period of 15 days after notice thereof from Landlord;

(b) if Tenant shall fail to maintain the Premises as provided in Article 15 hereof and such failure shall continue for a period of 40 days after notice (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such 40-day period, in which case no Event of Default shall exist as long as Tenant shall commence to undertake the requisite maintenance of the Premises in accordance with those Sections within such 40-day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(c) if Tenant shall fail to commence construction of the Tenant’s Work in accordance with the terms, covenants and conditions of Article 18 hereof (subject to Unavoidable Delays), and such failure shall continue for a period of 40 days after notice, or if Tenant, having commenced construction, shall fail to diligently prosecute the construction of the Tenant’s Work in accordance with the terms, covenants and conditions of said Article 18 (subject to Unavoidable Delays), and such failure shall continue for 40 days after notice;

(d) if the Facility Completion Date shall not have occurred by the Facility Completion Deadline (as it may have been extended pursuant to Section 18.04(c) above) in accordance with the terms, covenants and conditions of Article 18; provided that, so long as Tenant is making the Liquidated Damages payments required under Section 18.04(c) above, such failure shall not be an Event of Default unless it continues for a period of 90 days after notice;

(e) if the Processing Facility Completion Date shall not have occurred by the Processing Facility Completion Deadline (as it may have been extended pursuant to Section 18.04(d) above) in accordance with the terms, covenants and conditions of Article 18; provided that, so long as Tenant is making the Liquidated Damages payments required under Section 18.04(d) above, such failure shall not be an Event of Default unless it continues for a period of 90 days after notice;

(f) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease on Tenant's part to be performed or observed (subject to Unavoidable Delays), and such failure shall continue for a period of 40 days after notice thereof specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such 40-day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall commence the requisite performance or observance within such 40-day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(g) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such debts become due;

(h) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(i) to the extent permitted by law, if Tenant shall file a voluntary petition under the present or any future Federal Bankruptcy Act or any other present or future Federal, state or other bankruptcy or insolvency statute or law or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Act or any other present or future federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any action in furtherance of any action described in Sections 29.01(f) or 29.01(g) hereof or this Section 29.01(h);

(j) to the extent permitted by law, if within 60 days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal Bankruptcy Code or any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within 120 days after the

appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within 120 days after the expiration of any such stay, such appointment shall not be vacated;

(k) if any of the representations or warranties made by Tenant in Article 21 hereof or elsewhere in this Lease shall be false or incorrect in any material respect as of the time when made or deemed made;

(l) if, unless necessitated by a Casualty, Uncontrollable Circumstance or taking by eminent domain, Tenant shall vacate or abandon the Premises, or any portion thereof (the fact that any of Tenant's property remains in the Premises shall not be evidence that Tenant has not abandoned the Premises) for a period exceeding 30 consecutive days, or such shorter period as would cause the property or liability insurance coverage required to be maintained pursuant to Article 10 to be subject to, or in jeopardy of, cancellation or unenforceability of coverage for breach of or default in the terms of such insurance coverage;

(m) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby on account of work, labor and services performed by Tenant or on its behalf and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of 30 days; or

(n) intentionally omitted

(o) if there shall be an Event of Default under Section 11.03 of the Recycling Contract or an Event of Default under Article 18 of the Funding Agreement.

**Section 29.02. Landlord Remedies.** If an Event of Default occurs, Landlord shall have the right, at its election, at any time thereafter so long as such Default has not been cured, (x) to commence an action for the recovery of monetary damages on account of such Default, and/or (y) to commence an action for specific performance or injunctive relief, and/or and (z) enforce its rights and remedies under Section 29.03 below and/or the Recycling Contract. In no event shall Tenant be liable for special, consequential or incidental damages.

**Section 29.03. Events of Termination.**

(a) Article 15 of the Recycling Contract contains a mechanism for addressing the loss or unavailability of the Facility in three circumstances: City Fault (Section 15.01); No Fault (Section 15.02); and Contractor Fault (Section 15.03). Under this Lease:

(i) City Fault. An Event of Termination under Section 3.02(a)(i) or (ii), 3.05(b) or (c), or 12.02(d)(ii)(x) above or the occurrence of a Landlord Default under Section 29.14 below constitutes an Event of Termination, giving Tenant the right to terminate this Lease upon 20 days notice to Landlord and DSNY; and upon the delivery of such notice of termination, the provisions of Section 15.01 of the Recycling Contract shall apply; except that if the occurrence of an Event of Termination under Section 3.02(a) or 3.05(b) is due to an act of

God; including fire, earthquake, explosion, landslide, lightning, flood or epidemic, or is due to riots, civil disturbances, insurrections, acts of terrorism, enemy actions or war, then such Event of Termination shall be treated as an Event of Termination under Section 29.03(a)(ii) below; and

(ii) No Fault. An Event of Termination under Section 9.04(c) or 12.02(d)(ii)(y) or (z) above constitutes a "no fault" Event of Termination, giving Landlord and/or Tenant the right to terminate this Lease upon 20 days notice to the other Party; and upon the delivery of such notice of termination, the provisions of Section 15.02 of the Recycling Contract shall apply; except in a case in which one of the Parties acted (directly or indirectly) to cause the Event of Termination under Section 9.04(c), in which case such Event of Termination shall be treated as an Event of Termination under Section 29.03(a)(i) or (iii) depending on which Party so acted; and

(iii) Contractor Fault. An Event of Default by Tenant under Section 29.01 above constitutes an Event of Termination, giving Landlord the right to terminate this Lease upon 20 days notice to Tenant; and upon the delivery of such notice of termination, the provisions of Section 15.03 of the Recycling Contract shall apply.

(b) If this Lease is finally terminated due to an Event of Termination:

(i) The applicable provisions of Article 15 of the Recycling Contract shall apply, as set forth above.

(ii) Landlord may, upon ten (10) days notice, reenter and repossess the Premises and may dispossess Tenant and all other persons or property by summary proceedings or otherwise.

(iii) Tenant shall pay to Landlord all Rental payable under this Lease and shall remain liable for Rental falling due thereafter on the respective dates when such items of Rental would have been payable but for the termination of this Lease; provided that Landlord shall act in good faith and use reasonable efforts consistent with other City goals to mitigate damages. If Landlord, having recovered possession of the Premises, uses the same or a major portion thereof for municipal purposes, then Tenant's obligation for rent will be deemed satisfied.

**Section 29.04. Receipt of Moneys after Notice or Termination.** No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder.



**Section 29.05. Certain Waivers.** Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute or of the institution of legal proceedings in connection therewith, and Tenant for and on behalf of itself and all Persons claiming through or under Tenant, also waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a judgment or by warrant of a court of competent jurisdiction or in case of re-entry or repossession by Landlord, or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings.

**Section 29.06. Strict Performance.** No failure by Landlord or Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord or Tenant by reason of the occurrence of a Default, Event of Default, Landlord Default, or Event of Termination. No payment or acceptance of full or partial Rental during the continuance of any Default, Event of Default, Landlord Default, or Event of Termination, shall constitute a waiver of any such Default, Event of Default, Landlord Default, or Event of Termination or of the right to strict performance of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either Party, and no Default, Event of Default, Landlord Default, or Event of Termination shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver of Default, Event of Default, Landlord Default, or Event of Termination shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default, Event of Default, Landlord Default, or Event of Termination.

**Section 29.07. Right to Enjoin Defaults or Threatened Defaults; Remedies Cumulative.** In the event of a Default or threatened Default by either Party, Landlord, or Tenant (as applicable) shall be entitled to enjoin the Default or threatened Default by appropriate legal proceedings and shall have the right to invoke any rights and remedies allowed at law or in equity, or by statute, or otherwise. Each right and remedy of Landlord or Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or other documents executed between the Parties prior hereto, simultaneously herewith or hereafter, or now or hereafter existing at law or in equity or by statute or otherwise, and the existence or the exercise or beginning of the exercise by either Party, of any one or more of the rights or remedies provided for in this Lease, or any other such documents or now or hereafter existing at law or in equity, or by statute, or otherwise shall not preclude the exercise by such Party of any or all other rights or remedies provided for in this Lease or other such documents or now or hereafter existing at law or in equity or by statute or otherwise. Notwithstanding the foregoing, in no event shall Tenant be responsible for future rents or consequential damages if Landlord repossesses the Premises or terminates the Lease.

**Section 29.08. intentionally omitted.**

**Section 29.09. Remedies Under Bankruptcy and Insolvency Codes.** If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or

Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Act or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises, or any part thereof, and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, but shall not be limited to, each and every one of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease;
- (b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event an amount which is less than the aggregate Rental payable for such monthly period;
- (c) that Tenant shall continue to use the Premises in the manner required by this Lease;
- (d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;
- (e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;
- (f) that Tenant shall pay Landlord, within 30 days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Annual Base Rent payable hereunder, for the then current Lease Year;
- (g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;
- (h) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and
- (i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Development Sublease and propose to assign it (pursuant to Title 11 U.S.C. §365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms

and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Development Sublease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Development Sublease.

**Section 29.10.** intentionally omitted.

**Section 29.11.** Funds held by Tenant. During the period that there exists by Tenant an Event of Default, Tenant shall not pay, disburse or distribute the proceeds received by Tenant of any insurance policies covering or relating to the Premises, or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof received by Tenant (except to the extent such insurance proceeds or condemnation awards are required to be paid for Restoration Costs in connection with any Restoration being performed pursuant to Article 12 or Article 13 hereof).

**Section 29.12.** Proof of Damages. Landlord may look to any of the assets of Tenant (but not its officers, directors, members, joint venturers, shareholders, employees, partners, principals, agents or servants) for satisfaction of any obligation of Tenant under this Lease or for any damages for the breach hereof. Landlord, Lease Administrator and Apple shall not be limited in the proof of any damages that may be claimed against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord, Lease Administrator and Apple shall be entitled to recover as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

**Section 29.13.** Survival. The rights and remedies of Landlord and Tenant and the other provisions of this Article 29 shall survive the expiration or earlier termination of this Lease.

**Section 29.14.** Landlord Default. The occurrence of the following is a "**Landlord Default**":

(a) if Landlord shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease on Landlord's part to be performed or observed (subject to Unavoidable Delays), and such failure shall continue for a period of 40 days after notice thereof specifying such failure (unless such failure requires work to be performed,

acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such 40-day period, in which case no Event of Default shall be deemed to exist as long as Landlord shall commence the requisite performance or observance within such 40-day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(b) if any of the representations or warranties made by Landlord in Articles 9 or 21 hereof or elsewhere in this Lease shall be false or incorrect in any material respect as of the time when made or deemed made;

(c) if there shall be an Event of Default by the City under Section 11.04 of the Recycling Contract.

**Section 29.15. Tenant Remedies.** Upon the occurrence of a Landlord Default, Tenant shall have the right, at its election, at any time thereafter so long as such default has not been cured, (x) to commence an action for the recovery of monetary damages on account of such Default, and/or (y) to commence an action for specific performance or injunctive relief, and/or and (z) enforce its rights and remedies under Section 29.03 above and/or the Recycling Contract. In no event shall monetary damages for a Landlord Default include special, consequential or incidental damages.

## ARTICLE 30

### TERMINATION AND SURRENDER

**Section 30.01. Surrender of Premises.** Upon expiration or earlier termination of this Lease or upon a re-entry by Landlord upon the Premises pursuant to Article 29 hereof, Tenant, without any payment or allowance whatsoever by Landlord, except as otherwise provided in the Recycling Contract, shall surrender the Premises to Landlord in good order, condition and repair, reasonable wear and tear excepted, free and clear of all Liens and encumbrances other than easements and other rights that Landlord has agreed may survive the expiration or earlier termination of this Lease. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the expiration or earlier termination of this Lease.

**Section 30.02. Delivery of Contracts, etc.** Upon expiration or upon a re-entry by Landlord upon the Premises pursuant to Article 29, Tenant shall deliver to Landlord Tenant's executed counterparts of any service and maintenance contracts (to the extent the same are assignable) then affecting the Premises, true and complete maintenance records for the Premises for the three immediately preceding years, all original licenses and permits then pertaining to the Premises, Certificates of Occupancy then in effect for the Improvements, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed at the Premises, together with a duly executed assignment of the above to Landlord (which assignment of contracts, licenses and permits shall become effective with regard to any of the same upon Landlord's acceptance of same), and copies of all

financial reports, books, records, other documents relating to the operation of the Premises and the condition of the Improvements held by Tenant as required by Article 26 hereof.

**Section 30.03. Personal Property.** Tenant may remove all its personal property from the Premises not constituting Equipment. Any such property of Tenant which does not constitute Equipment and which shall remain on the Premises thirty (30) days after expiration of this Lease (or upon a re-entry by Landlord upon the Premises pursuant to Article 29) and after the removal of Tenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant, and either may be retained by Landlord as its property or be disposed of at Tenant's expense, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant.

**Section 30.04. Survival.** The provisions of this Article shall survive the expiration or earlier termination of this Lease.

## ARTICLE 31

### CLAIMS, JURISDICTION, IMMUNITIES, PROCESS

**Section 31.01. Waiver of Trial by Jury.** Landlord and Tenant hereby waive, for the benefit of Landlord, trial by jury in any action, proceeding or counterclaim brought by any of the foregoing against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event that Landlord commences any proceeding for nonpayment of any rent or any other sums required to be paid by Tenant or caused to be paid by Tenant under the terms of this Lease, Tenant will not interpose any counterclaim of any nature in any such proceedings.

**Section 31.02. Jurisdiction.** Any and all claims asserted by or against Landlord arising under this Lease or related thereto shall be heard and determined either in the courts of the United States located in New York City ("**Federal Courts**") or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To this effect Tenant agrees as follows:

(a) With respect to any possessory proceeding between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove such action to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(b) With respect to any action between Landlord and Tenant in Federal Court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(c) Tenant agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. However, Tenant does not waive its right to appeal or to obtain a stay.

(d) If Tenant commences any action against Landlord in a court located other than in the City, County and State of New York, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(e) Intentionally omitted.

**Section 31.03. Service of Process.** Tenant irrevocably consents to the service of any and all process in any action or proceeding instituted against Tenant by the mailing of copies of such process to Tenant to its address, and in the manner, set forth in Article 32. Landlord, Lease Administrator and Apple irrevocably consent to the service of any and all process in any action or proceeding instituted against any of them by the mailing of copies of such process to Landlord to its address, and in the manner, set forth in Article 32. Nothing in this Section 31.03 shall affect the right of Landlord to serve legal process in any other manner permitted by law.

## ARTICLE 32

### NOTICES

All notices and communication to the Parties or DSNY hereunder shall be delivered to the addresses for such Person listed below (except notices pursuant to Section 18.08, which shall be given as set forth therein). Actual delivery of any such notices at the addresses given below (whether in person or by means of a commercial delivery service that provides signed receipts for delivery), or delivery by certified mail, will be conclusive and deemed to be sufficient service upon such Party as of the date the notice was received by a Party. If certified mail or notice whose delivery was attempted by a commercial delivery service is refused or returned to the sending Party as non-deliverable, the service of the notice will be deemed conclusive and sufficient as of the date the U.S. Post Office has stamped the certified mail as refused or undeliverable or the date on which the commercial delivery service has stamped the notice as refused or undeliverable..

(a) All notices and correspondence to Landlord must be delivered to the following addresses and addressees or to such other addresses or addressees of which Landlord or Lease Administrator may notify Tenant from time to time:

c/o New York City Economic Development Corporation  
110 William Street  
New York, NY 10038  
Attn: Senior Vice President for Asset Management

with copies to:

General Counsel,  
New York City Department of Small Business Services  
110 William Street  
New York, NY 10038

General Counsel,  
New York City Economic Development Corporation  
110 William Street  
New York, NY 10038

Chief, Economic Development Division  
New York City Law Department  
100 Church Street  
New York, NY 10007

Director, Bureau of Waste Prevention, Reuse and Recycling  
New York City Department of Sanitation  
44 Beaver Street, 6<sup>th</sup> Floor  
New York, NY 10004

General Counsel,  
New York City Department of Sanitation  
125 Worth Street, Room 710  
New York, NY 10013

(b) All notices and correspondence to DSNY must be delivered to the following addresses and addressees or to such other addresses or addressees of which DSNY, Landlord or Lease Administrator may notify Tenant from time to time:

Director, Bureau of Waste Prevention, Reuse and Recycling  
New York City Department of Sanitation  
44 Beaver Street, 6<sup>th</sup> Floor  
New York, NY 10004

with copies to:

General Counsel,  
New York City Department of Sanitation  
125 Worth Street, Room 710  
New York, NY 10013

Senior Vice President for Asset Management  
New York City Economic Development Corporation  
110 William Street  
New York, NY 10038

Substantially All of the Premises and shall be paid, distributed and applied in accordance with provisions of Section 13.02.

## ARTICLE 34

### EXCAVATIONS AND SHORING

In accordance with Section 26-229 of the Administrative Code, if any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation, the right to enter upon the Premises in a reasonable manner upon reasonable notice for the purpose of doing such work, at Landlord's or such other Person's expense, as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, subject to Unavoidable Delays, in accordance with, and subject to, any applicable Requirements, and to the extent possible, with minimum interference with the on-going operations of Tenant and Subtenants; or

(b) perform or cause to be performed, at Tenant's expense, unless otherwise agreed in writing, all such work as may be necessary to preserve any of the walls of the Improvements from injury or damage and to support them by proper foundations.

Tenant shall not, by reason of such excavation or work, have any claim against Landlord, in its capacity as landlord) for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder. However, Tenant does not waive any rights against such adjacent land owner(s) notwithstanding that such adjacent land owner(s) may be the City of New York or any of its subdivisions, or Lease Administrator or any of its Affiliates.

## ARTICLE 35

### "ESTOPPEL" CERTIFICATES BY LANDLORD AND TENANT

**Section 35.01. Certificate of Tenant.** Tenant shall, within 30 days after request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease,



and (ii) whether, to the actual knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default.

**Section 35.02. Certificate of Landlord.** Landlord shall, within 30 days after request by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the actual knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such default or Event of Default.

**Section 35.03. Failure to Deliver Certificate.** Tenant's failure to deliver the certificate required by Section 35.01 within such 30 day period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, (c) not more than two months' rent has been paid in advance, and (d) no notice has been sent to Landlord of any default by Landlord which has not been cured. Landlord's failure to deliver the certificate required by Section 35.02 within such 30 day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

## ARTICLE 36

### QUIET ENJOYMENT

Landlord covenants that, as long as Tenant faithfully performs the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord. This covenant shall run with the land and shall bind Landlord, its successors and assigns, and shall inure to the benefit of Tenant, its successors and assigns.

## ARTICLE 37

### RECORDING OF LEASE AND EASEMENTS

Landlord and Tenant shall execute a memorandum of this Lease and the easements granted herein, and Tenant shall cause such memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (Kings County)

promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

## ARTICLE 38

### ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

**Section 38.01. Tax Contest Proceedings.** If the Premises becomes subject to any Imposition computed in relation to the assessed value thereof for real property tax purposes, then Tenant shall have the right, at its sole cost and expense, to seek reductions in such assessed value, and to prosecute appropriate administrative and judicial proceedings diligently conducted in good faith in connection therewith.

**Section 38.02. Imposition Contest Proceedings.** Tenant shall have the right to contest, at its sole cost and expense, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 5.02 hereof, payment of such Imposition may be postponed or deferred if, and only as long as, by reason of such postponement or deferment of such Imposition, in Landlord's sole reasonable discretion, neither the Premises nor any part thereof, could be in danger of being forfeited, and Landlord is not in danger of being subjected to criminal liability or penalty.

**Section 38.03. Requirement Contest.** Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant. Any such proceeding instituted by Tenant shall be commenced as soon as it is possible after the issuance of any such contested Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. Tenant shall comply with any such Requirement in accordance with the provisions of Article 19 hereof, if by reason of noncompliance therewith, in Landlord's sole reasonable discretion, the Premises, or any part thereof, could be in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or if failure to comply is hazardous to persons or property or would violate any insurance policy provisions.

**Section 38.04. Landlord's Participation in Contest Proceedings.** Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith.

## ARTICLE 39

### ARBITRATION

Procedure for Arbitration. In cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the Arbitration shall be conducted in accordance with the following:

(a) The Party desiring arbitration shall appoint a disinterested person that satisfies the requirements of Section 39.01(g) below, as arbitrator on its behalf and give notice thereof to the other Party who shall, within 15 days thereafter, appoint a second disinterested person that satisfies the requirements of Section 39.01(g) below, as arbitrator on its behalf and give notice thereof to the first Party.

(b) The two arbitrators thus appointed shall together appoint a third disinterested person that satisfies the requirements of Section 39.01(g) below, within 15 days after the appointment of the second arbitrator, and said three arbitrators shall, as promptly as possible, determine the matter that is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all Parties and judgment upon the award may be entered in any court having jurisdiction.

(c) If a Party who has the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other Party (or if the two arbitrators appointed by the Parties fail to appoint a third arbitrator when required hereunder, then either Party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator.

(d) The arbitration shall be conducted in the City and County of New York, and to the extent applicable and consistent with this Section 39.01, shall be conducted in accordance with the commercial Arbitration Rules then obtaining of the American Arbitration Association in effect at the time of such arbitration or any successor body of similar function. Each Party shall have the right to present evidence in the arbitration.

(e) The arbitration shall be conducted and the arbitrators' decision shall be guided by the following principles, which are agreed by the Parties: (i) the purpose of the Facility derives from Tenant's long-term service relationship with the City under the Recycling Contract; (ii) the Facility must accommodate Tenant's obligations under the Recycling Contract ; (iii) the Facility represents a substantial investment of private funds by Tenant; (iv) the Facility will be owned, operated and controlled by Tenant throughout the Term; and (v) the Facility that will be turned over to the City upon expiration or termination of the Lease will have been in use for the length of the Term.

(f) Any costs incurred by or payable to the arbitrators in any proceeding shall be paid by the Party which does not prevail or as shall be determined by the arbitrator, and each Party shall bear the costs of its own attorneys and other experts.

(g) Landlord and Tenant shall sign all documents and do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly.

(h) Each of the arbitrators shall be a professional having at least ten (10) years' experience in the design and construction of facilities similar in all material respects to the Premises, and to the extent applicable and consistent with this Article 39, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

## ARTICLE 40

intentionally omitted

## ARTICLE 41

### LANDLORD'S MAINTENANCE EASEMENT

Landlord hereby reserves an easement for ingress and egress to, from and over the Premises in order to maintain, replace and repair (i) utilities installed by Landlord as Landlord's Work, (ii) improvements installed as part of the Site Work, and (iii) bulkheading adjacent to the Premises not installed by Tenant as part of Tenant's Work.

Landlord, Lease Administrator and their respective designees shall have the right at all times, but on reasonable notice, to enter upon the Premises with workers, materials and equipment to construct, reconstruct, lay, relay, maintain, operate and inspect facilities described in the preceding sentence, if any, in or adjacent to the Premises, provided that such entry onto or permitted use of the Premises may not interfere with Tenant's use of the Premises or operation of the Facility. Landlord shall be responsible to promptly repair any damage to the Premises caused by Landlord, Lease Administrator or other Person acting by or under or in connection with the easement herein granted.

## ARTICLE 42

### MISCELLANEOUS

**Section 42.01. Headings, Captions and Table of Contents.** The descriptive headings and captions used in this Lease are for the purposes of convenience only and do not constitute a part of this Lease. The Table of Contents hereof is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

**Section 42.02. Governing Law.** This Lease and its performance shall be governed by and construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the Party drafting this Lease.

**Section 42.03. Amendments; Waiver.** This Lease may not be amended except by an instrument in writing signed by both Parties. The failure by either Party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

**Section 42.04. Entire Agreement.** This Lease (including the Recitals and Exhibits hereto and any side letters signed in connection herewith), the Recycling Contract and the Funding Agreement (including attachments, exhibits and schedules thereto), contain all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Premises other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the Parties.

**Section 42.05. Invalidity of Certain Provisions.** The provisions of this Lease are intended to be severable. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 42.06. No Partnership or Joint Venture.** Nothing herein contained shall be construed in any manner to create any relationship between Landlord and Tenant other than the relationship between landlord and tenant, and Landlord and Tenant will not be considered partners or co-venturers for any purpose.

**Section 42.07. Consents and Approvals.**

(a) **Effect of Granting or Failure to Grant Approvals or Consents.** All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not, except where expressly stated otherwise, be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any further similar act. The foregoing shall not limit the effect of any provision of this Lease by which consent is deemed granted, if objection is not made within a specified period.

(b) **Remedy for Refusal to Grant Consent or Approval.** If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified

standard has been met so that the consent or approval should have been granted, then the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the Party requesting or requiring the consent or approval.

(c) No Unreasonable Delay; Reasonable Satisfaction; Discretion. Wherever this Lease provides that Landlord's or Tenant's consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed. Any matter required to be done satisfactorily or to the satisfaction of a Party need only be done reasonably satisfactorily or to the reasonable satisfaction of that Party. Unless specifically stated otherwise, all consents of Landlord required under this Lease shall be granted in Landlord's sole discretion, and granted, may be subject to such conditions as Landlord may impose in its sole reasonable discretion.

(d) No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either Party hereto as a condition of the grant of any consent or approval which may be required under this Lease (but this provision shall limit Landlord only in its proprietary capacity as owner of the Premises and landlord under this Lease; it shall not affect Landlord in its governmental capacity).

**Section 42.08.** "Including". "Including" as used in this Lease, shall be deemed to mean "including, without limitation."

**Section 42.09.** Remedies Not Exclusive. No right or remedy conferred upon Landlord in this Lease is intended to be exclusive of any other right or remedy contained in this Lease. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Lease or now or hereafter available to Landlord at law, in equity, by statute or otherwise.

**Section 42.10.** Acceptance of Partial Performance; No Waiver. The acceptance by either Party of any partial performance of any obligation hereunder on the part of the other to be performed hereunder, or the failure by either Party to enforce any provision of this Lease shall not be considered a waiver of any of said Party's rights under this Lease.

**Section 42.11.** Required Provisions. Each and every provision of law required to be inserted in this Lease, and every provision required by law to be inserted in this Lease, shall be and is deemed to be inserted in this Lease. If, through mistake or otherwise, any such provision is not inserted or is not inserted in correct form, then upon the application of either Party, this Lease shall be amended to make or correct the required insertion.

**Section 42.12.** Successors and Assigns. The terms, covenants and conditions of this Lease herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

**Section 42.13.** No Warranty by Landlord. Any approval by Landlord, Lease Administrator, Apple or DSNY of any plans and specifications, or any inspection by Landlord, Lease Administrator, Apple or DSNY of any construction on the Premises shall not be construed as a warranty by any of the foregoing of the design of any such drawings and specifications, or workmanship or materials contained in such construction.

**Section 42.14. Construction of Terms and Words.** All terms and words used in this Lease regardless of the number and gender in which they are used shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context or sense may require, with the same effect as if such numbers and words had been fully and properly written in the required number and gender.

**Section 42.15. Counterparts.** This Lease may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**Section 42.16. Recycling Contract Governs.** In the event there is any inconsistency between the terms of this Lease and the terms of the Recycling Contract, the terms contained in the Recycling Contract shall govern, except with respect to Section 3.05(c) above which shall govern the presence of Hazardous Materials at the Premises and Article 10 which sets forth insurance requirements for the Premises.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

CITY OF NEW YORK

By: \_\_\_\_\_  
Name:  
Commissioner of Small Business Services

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Acting Corporation Counsel

SIMS MUNICIPAL RECYCLING  
OF NEW YORK LLC

By: \_\_\_\_\_  
Name:  
Title:



Acknowledged:

New York City Department of Sanitation

By: \_\_\_\_\_

Name:

Title:

New York City Economic Development Corporation

By: \_\_\_\_\_

Name:

Title:

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2008, before me, the undersigned a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_ day of \_\_\_\_\_ in the year 2008, before me, the undersigned a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

EXHIBIT A

PREMISES

Property owned by the City of New York located in the Borough of Brooklyn, County of Kings, State of New York, such property being a portion of Lot 1 within Block 662 as shown on the Tax Map of said Borough, and being more particularly shown on the drawing attached hereto.

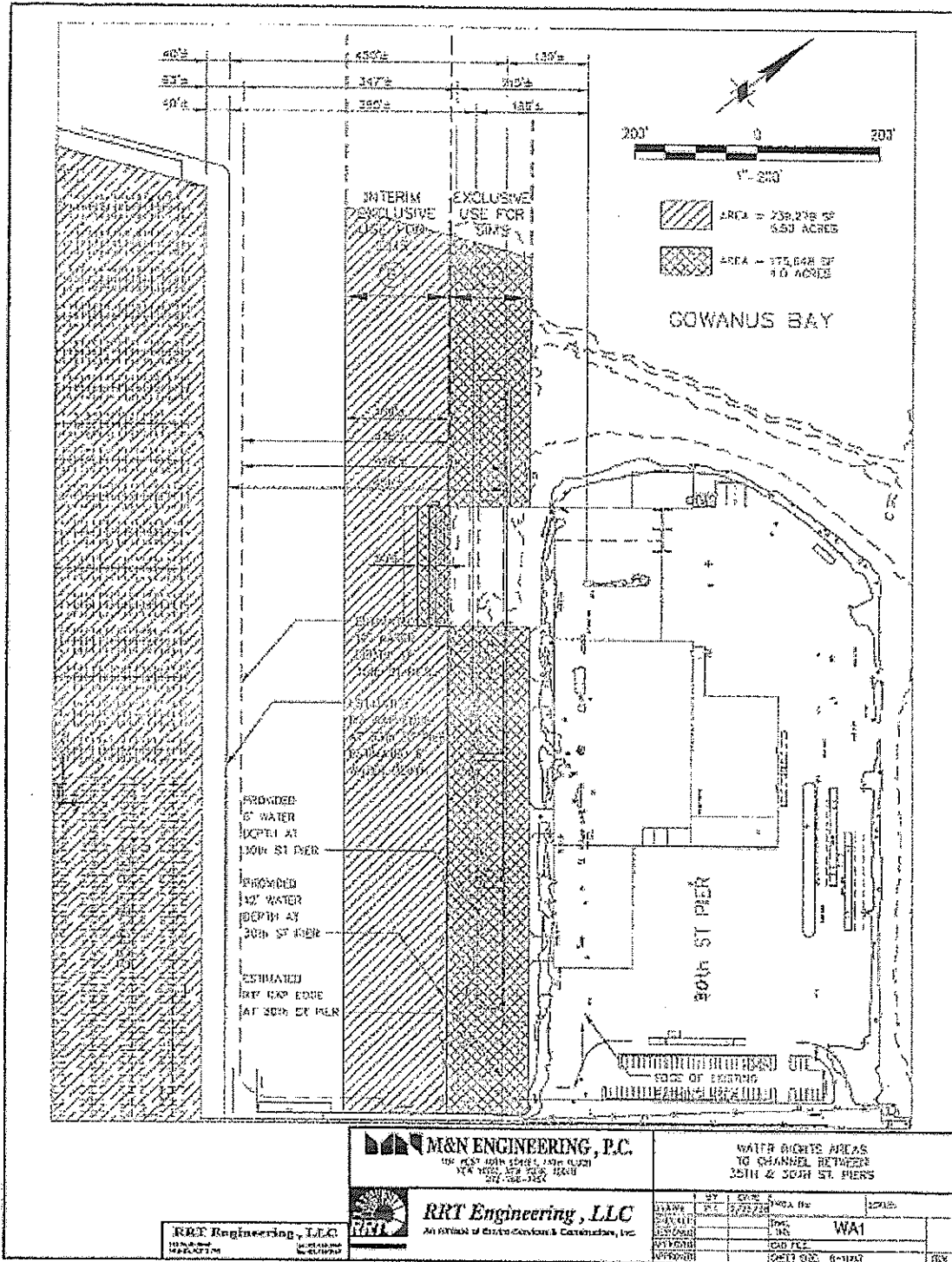


EXHIBIT A-1

EASEMENT AREA

Property owned by the City of New York located in the Borough of Brooklyn, County of Kings, State of New York, such property being a portion of Lot 1 within Block 662 as shown on the Tax Map of said Borough, and being more particularly shown on the photograph attached hereto.

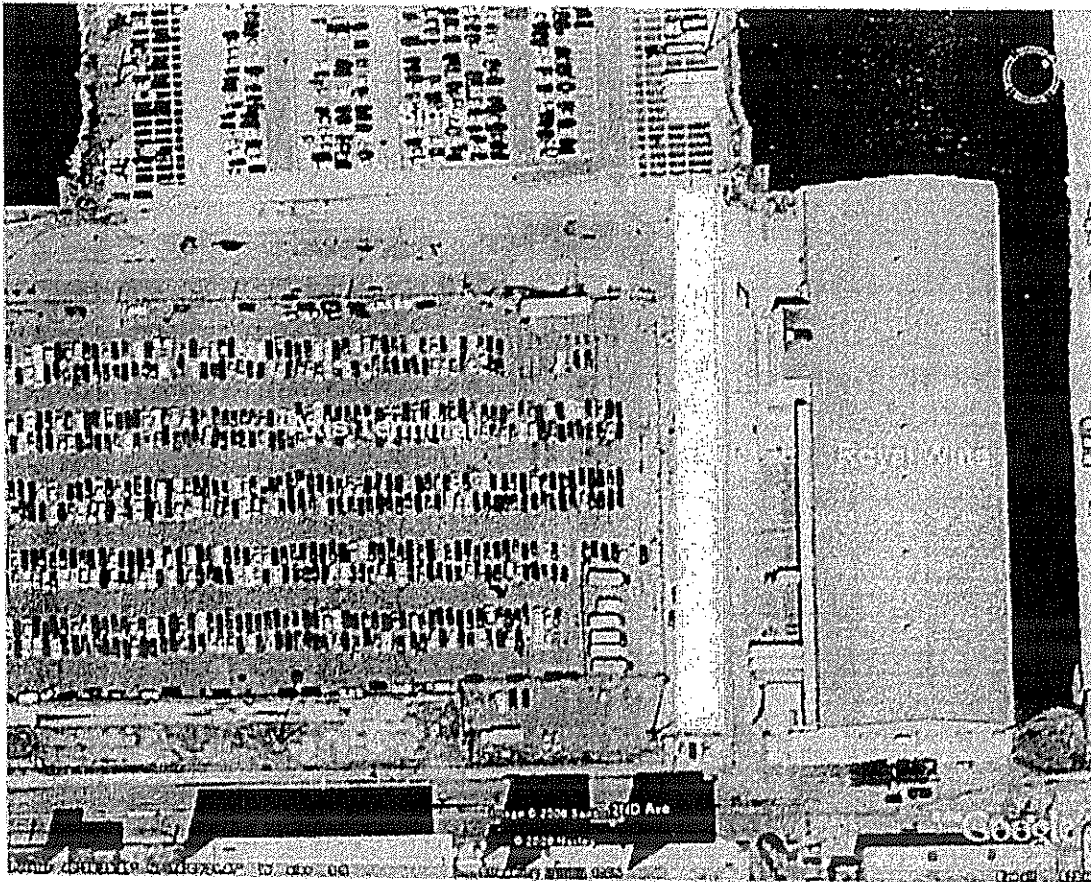


EXHIBIT A-2

PARTIAL PREMISES

Property owned by the City of New York located in the Borough of Brooklyn, County of Kings, State of New York, such property being a portion of Lot 1 within Block 662 as shown on the Tax Map of said Borough, and being more particularly shown as the cross-hatched area labeled "Initial Premises Delivery Area" on the drawing attached hereto.

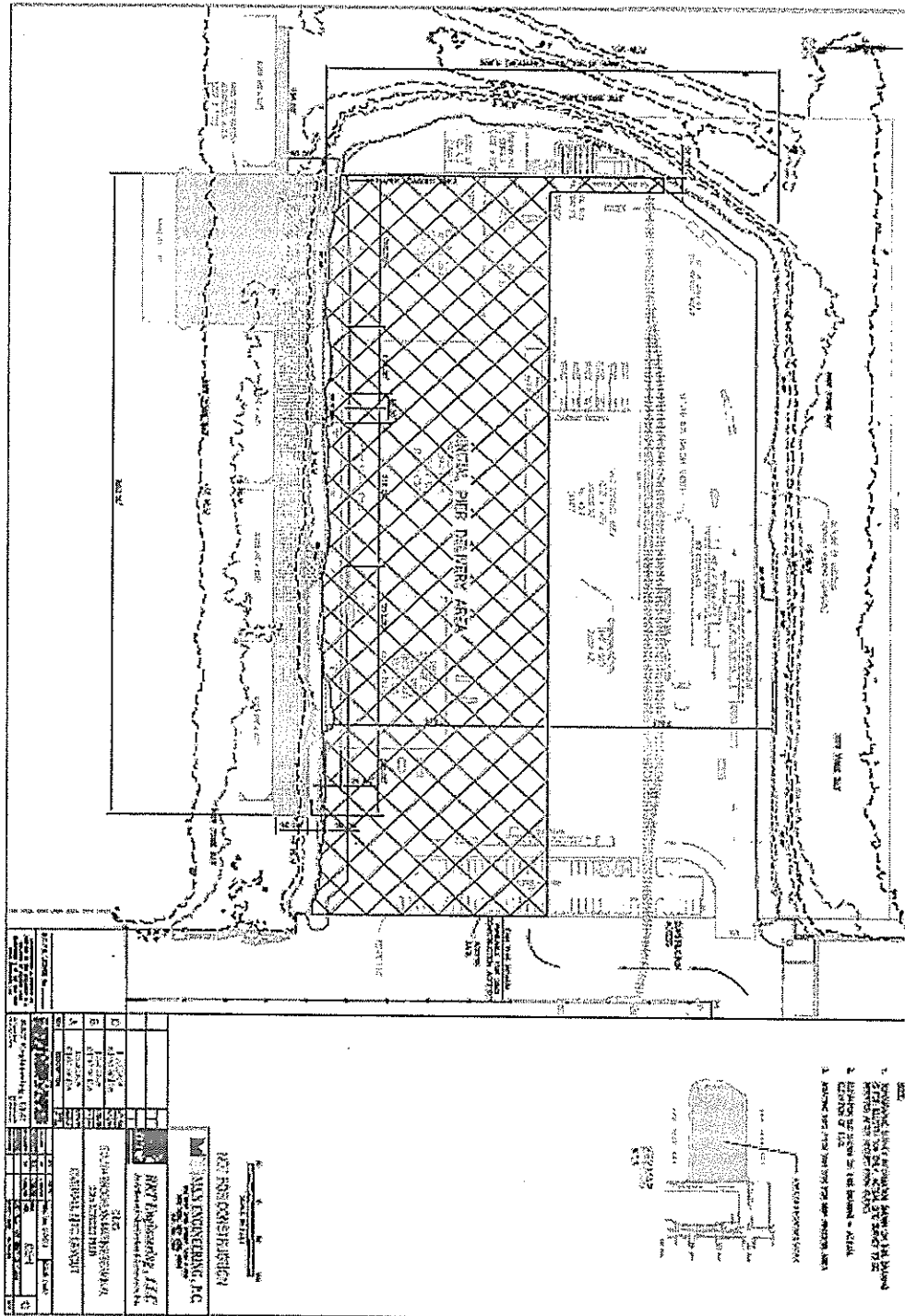


EXHIBIT B

TITLE MATTERS

The Premises are leased subject to the following:

1. Building restrictions and regulations now or hereafter in force and present and future zoning laws, ordinances, resolutions and regulations of all boards, bureaus, commissions and bodies of any municipal, county, state or federal sovereigns now having or hereafter acquiring jurisdiction over the Premises and the use and improvement thereof. The foregoing is subject to Landlord's representation in Section 9.06.

2. The rights reserved in Article 41 hereof.

3. Matters which an accurate survey would show, provided that the same do not render title unmarketable.

EXHIBIT C

LANDLORD'S WORK

1. Landlord to construct and bring to a point at the property line of the Premises at the southeast corner thereof:

(a) 12" water line; and

(b) electrical transmission line for 2800 kw.

2. Landlord to perform mitigation required in connection with the State and federal permits to be obtained by Landlord, as set forth on Exhibit E of this Lease, for the dredging and in/over-water construction as part of Tenant's Work and the Site Work.

# EXHIBIT D

## SITE PLAN

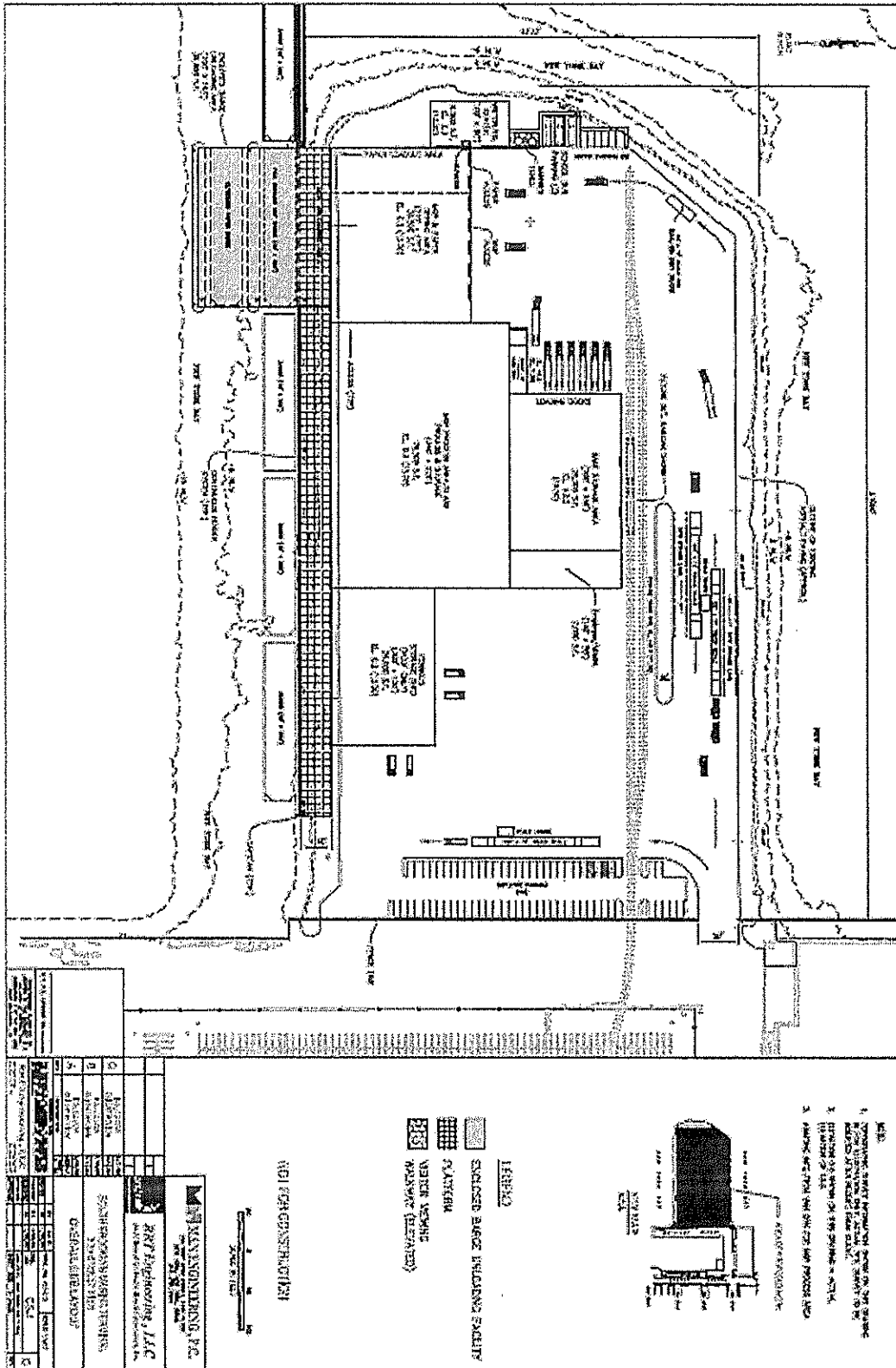




EXHIBIT E

SCHEDULE OF PERMITS AND APPROVALS

| ACTIONS AND APPROVALS  | RESPONSIBLE PARTY   | PROJECTED APPLICATION DATE  | EXPECTED PERMIT RECEIPT   |
|--|---|---|---|
| CITY<br>• Work Permits (SBS-Waterfront Permits Unit)   | Tenant  | 8/08  | 12/08   |
| • Local Waterfront Revitalization Program for Coastal Zone Consistency (NYC DCP and NYS DOS) | Landlord  | 10/07   | 9/08  |
| • Sewer discharge and water service connections (DEP)  | Tenant  | 8/08  | 12/08   |
| STATE<br>• Protection of Waters (DEC)  | Landlord  | 10/07   | 9/08  |
| • Tidal Wetlands Permit (DEC)  | Landlord  | 10/07   | 9/08  |
| • Stormwater-SPDES Construction and Industrial Activity Permits (DEC)                        | Tenant<br>(Construction only;<br>Industrial Activity<br>not required) | 60 days prior to commencement of project construction.            | Approximately 5 days before commencement of construction.         |
| • Part 360 Recycling Facility Registration (DEC)   | Tenant  | If required: 90 days prior to commencement of facility operations | If required: 60 days prior to commencement of facility operations |
| FEDERAL<br>• Section 10: Construction-Rivers and Harbors Act (USACE)                         | Landlord  | 10/07   | 9/08  |

Note: State and federal water-related approvals will be handled under a joint federal-state permit application.

EXHIBIT F

LOCAL LAW 69/48 QUESTIONNAIRE

Final\*

INITIAL EMPLOYMENT REPORT

In order to comply with Local Law reporting requirements, the Company is required to complete and return this form to NYCEDC, 110 William Street, Attention: Compliance, New York, NY 10038 on or before the execution and delivery of its Project Agreement. The Company shall submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants. Each Tenant must complete a copy of this form with respect to itself and any of its subtenants and return it to the Company.

1. Please provide the total number of employees in each category below that will be employed at the Project Location(s) by the Company and its Affiliates and any Tenants and subtenants of Tenants on or about the date of the Project Agreement (for land sales please use the date of the deed):

Permanent Full-Time Employees: \_\_\_\_\_ Non-Permanent Full-Time Employees: \_\_\_\_\_  
 Permanent Part-Time Employees: \_\_\_\_\_ Non-Permanent Part-Time Employees: \_\_\_\_\_  
 Full-Time Equivalent Employees: \_\_\_\_\_ Contract Employees: \_\_\_\_\_

2. Please estimate the total number of employees in each category below that will be employed (both retained and created jobs) at the Project Location(s) by the Company and its Affiliates and any Tenants and subtenants of Tenants on June 30<sup>th</sup> of the next eight (8) years following the Closing date:

|                                | 1 <sup>st</sup> | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | 5 <sup>th</sup> | 6 <sup>th</sup> | 7 <sup>th</sup> | 8 <sup>th</sup> year |
|--------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------|
| Full-Time Employees            |                 |                 |                 |                 |                 |                 |                 |                      |
| Part-Time Employees            |                 |                 |                 |                 |                 |                 |                 |                      |
| Full-Time Equivalent Employees |                 |                 |                 |                 |                 |                 |                 |                      |
| Contract Employees             |                 |                 |                 |                 |                 |                 |                 |                      |

**DEFINITIONS:**

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

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

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

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

**"Full-Time Equivalent Employee"** is two or more Part-Time Employees who collectively work at least 35 hours per week at a Project Location.

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

**"Project Agreement"** is any agreement or instrument (such as a lease agreement or deed) pursuant to which an entity purchases or leases (directly or by assignment from NYCEDC) property from NYCEDC.

**"Project Location"** is any location that is leased (directly or by assignment from NYCEDC) or purchased by the Company from NYCEDC.

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

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

Entity Name: \_\_\_\_\_

Signature By: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_ Title: \_\_\_\_\_

151284 05

EXHIBIT G

E.O. 50 EMPLOYMENT REPORT

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**THE CITY OF NEW YORK  
DEPARTMENT OF BUSINESS SERVICES  
DIVISION OF LABOR SERVICES**

110 William Street, 2nd Floor  
New York, New York 10038  
(212) 513-6433 or 513-6323  
Fax No. (212) 618-8899

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SUPPLY AND SERVICE EMPLOYMENT REPORT (ER)

A. GENERAL INFORMATION:

1. Your contractual relationship in this contract is:
  - a. Contractor \_\_\_\_\_ (e.g., Vendor, Prime, Other)
  - b. Subcontractor \_\_\_\_\_ (e.g., Supplier, Manufacturer, Other)
  
2. This ER is for Headquarters \_\_\_\_\_ Operating Facility \_\_\_\_\_
  
3. Employer / Identification Number: \_\_\_\_\_
  
4. Number of Employees at this facility (location): \_\_\_\_\_
  
5. This firm is a: \_\_\_\_\_ Minority Business Enterprise  
\_\_\_\_\_ Minority / Woman Business Enterprise  
\_\_\_\_\_ Woman-owned Business Enterprise  
\_\_\_\_\_ Other
  
6. Industry Code: \_\_\_\_\_

B. PART I. CONTRACTOR / SUBCONTRACTOR INFORMATION\*:

1. \_\_\_\_\_  
Contractor / Subcontractor Name

1a. If subcontractor, name of prime contractor is \_\_\_\_\_

2. \_\_\_\_\_  
Facility Address

\_\_\_\_\_  
City State Zip Code County

3. \_\_\_\_\_  
Chief Operating Officer Telephone Number

4. \_\_\_\_\_ Telephone Number  
Name of Designated Equal Opportunity  
Compliance Officer (or Name of Person to  
contact concerning this Employment Report)

\_\_\_\_\_  
Address of Designated Equal Opportunity Fax Number  
Compliance Officer

*\*Industrial Commercial Incentive Program applicants or developers please see  
page 16 which should be completed in addition to Part I.*

5. \_\_\_\_\_  
Nature of Contract to be Performed

6. (a) \_\_\_\_\_  
Contracting Agency (City Agency)

(b) \_\_\_\_\_ (c) \_\_\_\_\_  
Contract Amount Term Of Contract

7. List each of the firm's facilities, the addresses and the number of employees, where this contract or parts of this contract will be performed. (A facility is the headquarters or an operating location which makes its own personnel decisions. Please note that each separate location is not an independent operating facility unless hiring and termination decisions are made there).

\_\_\_\_\_  
\_\_\_\_\_

8. Is any part of this contract, in an amount exceeding \$ 50, 000, to be performed by a subcontractor?

Yes \_\_\_\_ No \_\_\_\_ Not Known At This Time \_\_\_\_\_. If yes, please list the name (s) and address(es) of the subcontractor(s), and either submit a copy of their Employment Report(s) or have them submit directly to the contracting agency. If subcontractors are unknown at this time, see the Employment Report Instructions for subcontractor submission requirements.

\_\_\_\_\_  
\_\_\_\_\_

9a. Has the Division of Labor Services (DLS) within the past twenty-four (24) months reviewed an ER submission for your organization and issued a Certificate of Compliance, Administrative Certificate of Compliance, or a Recertification Certificate to your firm for the facility(ies) involved in the performance of this contract?  
Yes \_\_\_\_ No \_\_\_\_.

9b. Has DLS within the past three (3) months reviewed an ER submission for your organization and issued a Conditional Certificate of Compliance, or Conditional Administrative Certificate of Compliance. Yes \_\_\_\_ No \_\_\_\_.

If yes to 9a or b, submit the following documents: ATTACH A COPY OF THE CERTIFICATE; a completed Part I of the ER; a copy of your equal employment opportunity (EEO) statement as it is presented in company publications and posted on bulletin boards; and a signed and notarized ER signature page.

**NOTE: DLS WILL NOT ISSUE A CONTINUED COMPLIANCE CERTIFICATE OR RECERTIFICATION IN CONNECTION WITH THIS CONTRACT UNLESS THE REQUIRED CORRECTIVE ACTIONS IN PRIOR CONDITIONAL CERTIFICATES OF COMPLIANCE HAVE BEEN TAKEN WITHIN THREE MONTHS OF THE ISSUANCE OF SUCH DOCUMENT.**

9c. Has an Employment Report already been submitted for a different contract (not covered by this Employment Report) for which you have not yet received a compliance certificate? Yes \_\_\_\_ No \_\_\_\_ If yes, for the facility(ies) covered by the Employment Report already submitted, and not yet approved, complete only Part I of the Employment Report and provide DLS with the date the Employment Report was submitted, the name of the City agency with whom the contract is made and the name and telephone number of the person whom the Employment Report was submitted.

Date submitted: \_\_\_\_\_

Agency to which submitted: \_\_\_\_\_

Name and Title of Agency Person: \_\_\_\_\_

Telephone: \_\_\_\_\_

10. Has your firm at the facility(ies) involved in the performance of this contract, in the past twenty-four (24) months, been audited by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)? Yes \_\_\_\_ No \_\_\_\_.

If yes,

a. Name and address of OFCCP office. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. Was a Certificate of Equal Employment Compliance issued within the past twenty-four (24) months? Yes \_\_\_\_ No \_\_\_\_ If yes, ATTACH A COPY OF SUCH CERTIFICATE. NOTE: You may submit a copy of such certificate in lieu of completing Parts II & III of this Employment Report. Please sign and notarize the signature page of the ER on page 9 or it will not be accepted by DLS.

ATTACH A COPY OF YOUR EEO STATEMENT AS IT IS PRESENTED IN COMPANY PUBLICATIONS AND / OR POSTED ON BULLETIN BOARDS.

NOTE: Your firm must comply with the requirements of NEW YORK CITY CHARTER CHAPTER 56, EXECUTIVE ORDER NO. 50 (1980) and the implementing rules. This includes the promulgation and dissemination of an EEO statement which includes the protected groups identified by race, color, age, sex, creed, national origin, disability, marital status, sexual orientation and citizenship status as stated in Section 3 (f) of E.O. 50.

c. Were any corrective actions required or agreed to? Yes \_\_\_\_ No \_\_\_\_ If yes, ATTACH A COPY OF SUCH REQUIREMENTS OR AGREEMENTS. NOTE: If corrective actions were agreed to or were taken, you must submit documentation (including the letters of deficiency and the conciliation agreement) regarding these corrective measures in lieu of completing Parts II & III of this Employment Report. DLS requires the submission of all future reports concerning implementation of corrective measures and / or a completed Employment Report.

**C. PART II: DOCUMENTS REQUIRED:**

THE DOCUMENTS LISTED BELOW MUST BE SUBMITTED WITH THIS EMPLOYMENT REPORT. These documents may be in the form of printed booklets, brochures, manuals, memoranda, etc. Please make certain that you submit the MOST CURRENT DOCUMENT (S), including all applicable amendments to the plans or policies.

NOTE: IF EACH FACILITY PERFORMING ON THE CONTRACT USES EXACTLY THE SAME SET OF DOCUMENTS PLEASE INDICATE AND SUBMIT ONE COMPLETE SET. HOWEVER, IF ANY FACILITY HAS ADDITIONAL (FACILITY SPECIFIC) POLICIES AND PROCEDURES THEN COPIES OF THESE DOCUMENTS MUST BE SUBMITTED WITH EACH RESPECTIVE EMPLOYMENT REPORT. THE OMISSION OF SUCH FACILITY SPECIFIC DOCUMENTS WILL RENDER THE EMPLOYMENT REPORT INCOMPLETE.

11. Please submit the following documents or policies. If the policy (ies) are unwritten, attach a full explanation of the practices. List and submit each document and / or unwritten practice explanation and label it according to the question to which it corresponds (e.g. 11a, 11b, etc.)

Yes or No

\_\_\_ a) health benefit coverage / description (s) for all management, nonunion and union employees (whether company or union administered) \_\_\_\_\_

\_\_\_ b) disability, life, other insurance coverage / description \_\_\_\_\_

\_\_\_ c) employee policy / handbook \_\_\_\_\_

\_\_\_ d) personnel policy / manual \_\_\_\_\_

\_\_\_ e) supervisor's policy / manual \_\_\_\_\_

\_\_\_ f) pension plan or 401k coverage / description for all management, nonunion and union employees (whether company or union administered) \_\_\_\_\_

\_\_\_ g) collective bargaining agreement (s) \_\_\_\_\_

\_\_\_ h) employment application (s) \_\_\_\_\_

\_\_\_ i) employee evaluation policy / form(s) \_\_\_\_\_



\_\_\_\_ j) Does your firm have medical and / or non-medical (i.e. education, military, personal, pregnancy, child care) leave policy?

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12a. To comply with the Immigration Reform and Control Act of 1986 when and of whom does your firm require the completion of an I-9 Form?

- |                                |                  |                       |                  |
|--------------------------------|------------------|-----------------------|------------------|
| a) prior to job offer          | Yes ____ No ____ | e) to some applicants | Yes ____ No ____ |
| b) after conditional job offer | Yes ____ No ____ | f) to all applicants  | Yes ____ No ____ |
| c) after a job offer           | Yes ____ No ____ | g) to some employees  | Yes ____ No ____ |
| d) within first 3 days on job  | Yes ____ No ____ | h) to all employees   | Yes ____ No ____ |

12b. Explain where and how completed I-9 Forms, with their supportive documentation, are maintained and made accessible. \_\_\_\_\_

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13a. Does your firm or any of its collective bargaining agreements require job applicants to take a medical examination? Yes \_\_\_\_ No \_\_\_\_ If yes, is the medical examination given:

- 1) prior to a job offer Yes \_\_\_\_ No \_\_\_\_
- 2) after a conditional job offer Yes \_\_\_\_ No \_\_\_\_
- 3) after a job offer Yes \_\_\_\_ No \_\_\_\_
- 4) to all applicants Yes \_\_\_\_ No \_\_\_\_
- 5) only to some applicants Yes \_\_\_\_ No \_\_\_\_

If yes, for which applicants?

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13b. Attach copies of all medical examination or questionnaire forms and instructions utilized for these examinations.

14a. Do you have a written equal employment opportunity (EEO) policy? Yes \_\_\_\_ No \_\_\_\_ If yes, list the document (s) and page number (s), etc. where these written policies are located. If the EEO Policy is contained in a document (s) other than that submitted in Part II of the Employment Report, ATTACH A COPY OF EACH DOCUMENT.

14b. Does the operating facility (ies) have a current affirmative action plan (s) (AAP) developed pursuant to U.S. Executive Order No. 11246 or other Federal Law. Yes \_\_\_\_ No \_\_\_\_ If yes, ATTACH A COPY (IES) OF THE AAP (S) and check the appropriate box (es) indicating which protected group (s) are covered by AAP.

Minorities and Women     Individuals with Handicaps     Other(specify) \_\_\_\_\_

15a. Does your firm or collective bargaining agreement (s) have an internal grievance procedure with respect to EEO complaints? Yes \_\_\_\_ No \_\_\_\_ If yes, please attach a copy of this policy.

15b. If no, ATTACH a report-detailing your firm's unwritten procedure for handling EEO complaints.

16. Has any employee, within the past three years, filed a complaint pursuant to an internal grievance procedure with any official of your firm with respect to equal employment opportunity? Yes \_\_\_\_ No \_\_\_\_.

If the answer to question 16 is "Yes", attach an internal complaint log summarizing the nature of the complaints (e.g. allegation of failure to promote based on race, sexual harassment, etc.), not positions of the complainants, whether investigations were made and dispositions, if any. You need submit the names of the complainants (if deemed necessary, DLS may require submission of these names).

17. Has your firm, within the past three years, been named as a defendant (or respondent) in any administrative or judicial action where the complainant (plaintiff) alleged violation of any anti-discrimination or affirmative action laws? (i.e. Title VII of the 1964 Civil Rights Act; Age Discrimination in Employment Act; Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Executive Order No. 11246; Civil Rights Act of 1866 (42 U.S.C. §1981); state or local fair employment practices laws) Yes \_\_\_\_ No \_\_\_\_

If the answer to question 17 is "Yes" attach a log, including the name (s) of the complainant, the Administrative agency or court in which the action is filed, the nature and current status or Disposition. ATTACH A COPY (IES) OF ANY ORDER, CONSENT DECREE OR DECISION resulting from any action explained by this response.

18. Are there any jobs for which there are physical qualifications? Yes \_\_\_\_ No \_\_\_\_ If yes, list the job (s), submit a job description and state the reason (s) for the qualification (s).

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19. Are there any jobs for which there are age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status qualifications? Yes \_\_\_\_ No \_\_\_\_ If yes, list the job (s), submit a job description (s), and state the reason (s) for the qualification.

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20. Please check below whether the following policies and practices apply to the job categories listed:

|                         | Job Description | Promote from Within | External Hire | Job Posting | On-the-Job Training |
|-------------------------|-----------------|---------------------|---------------|-------------|---------------------|
| Managers                |                 |                     |               |             |                     |
| Professionals           |                 |                     |               |             |                     |
| Technicians             |                 |                     |               |             |                     |
| Sales Workers           |                 |                     |               |             |                     |
| Clericals               |                 |                     |               |             |                     |
| Craftworkers            |                 |                     |               |             |                     |
| Operatives/<br>Laborers |                 |                     |               |             |                     |
| Service Workers         |                 |                     |               |             |                     |

21. FOR CONTRACTORS EMPLOYING 150 OR MORE EMPLOYEES: Please indicate below the relevant geographic recruitment or labor market area (s) (i.e. nation, specific county or specific metropolitan, statistical area) for each job category employed at this facility.

|                     | Relevant Geographic Recruitment or Labor Market Area(s) |
|---------------------|---|
| Managers            |   |
| Professionals       |   |
| Technicians         |   |
| Sales Workers       |   |
| Clericals           |   |
| Craftworkers        |   |
| Operatives/Laborers |   |
| Service Workers     |   |

SIGNATURE PAGE

I, (print name of authorized official signing) \_\_\_\_\_

hereby certify that the information submitted herewith is true and complete to the best of my knowledge and belief and submitted with the understanding that compliance with New York City's equal employment requirements, as contained in Chapter 56 of the City Charter, Executive Order No. 50 (1980), as amended and the implementing Rules, is a contractual obligation.

\_\_\_\_\_  
Contractor's Name

\_\_\_\_\_  
Name of person who prepared this Employment Report

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of official authorized to sign on behalf of the contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

I, (print name of authorized official signing) \_\_\_\_\_

UNDERSTAND THAT THE WILLFUL OR FRAUDULENT FALSIFICATION OF ANY DATA OR INFORMATION SUBMITTED HEREWITH MAY RESULT IN THE TERMINATION OF ANY CONTRACT BETWEEN THE CITY AND THE BIDDER OR CONTRACTOR FROM PARTICIPATION IN ANY CITY CONTRACT FOR A PERIOD OF UP TO FIVE YEARS. FURTHER, SUCH FALSIFICATION MAY RESULT IN CRIMINAL PROSECUTION.

Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 199 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

X  
\_\_\_\_\_  
Authorized Signature Date

**THIS PAGE MUST BE COMPLETED IN ITS ENTIRETY. IT MUST BE SIGNED AND NOTARIZED. ONLY ORIGINAL SIGNATURES WILL BE ACCEPTED.**

**CONFIDENTIALITY POLICY: TO THE EXTENT PERMITTED BY LAW AND CONSISTENT WITH THE PROPER DISCHARGE OF THE DIVISION OF LABOR SERVICES' RESPONSIBILITIES UNDER NYC CHARTER CHAPTER 56, EXECUTIVE ORDER NO. 50 (1980), AS AMENDED, AND THE IMPLEMENTING RULES ALL INFORMATION PROVIDED BY A CONTRACTOR TO DLS SHALL BE CONFIDENTIAL.**

D. PART III: EMPLOYMENT DATA TABLES / SIGNATURE PAGE:

PART III consists of the following:

- A. JOB CLASSIFICATION AND INCUMBENTS FORM
- B. NEW HIRES FORM/TRACKING OF EMPLOYEES HIRED OVER THE LAST THREE YEARS
- C. TERMINATIONS FORM/EMPLOYMENT TERMINATIONS OVER THE LAST THREE YEARS

YOU ARE REQUIRED TO COMPLETE ALL INFORMATION - IF ANY INFORMATION IS NOT AVAILABLE YOU MUST CONTACT THE CITY AGENCY WITH WHOM YOU ARE CONTRACTING (CONTRACTING AGENCY) OR IF YOU ARE CONTRACTING THROUGH THE DEPARTMENT OF GENERAL SERVICES/DIVISION OF MUNICIPAL SUPPLIES, YOU MUST CONTACT THE DIVISION OF LABOR SERVICES DIRECTLY. SUBMIT AN EXPLANATION DETAILING WHY THIS INFORMATION IS NOT AVAILABLE.

CONTRACTORS AND SUBCONTRACTORS HAVING THE CAPABILITY TO DO SO MAY PROVIDE DLS WITH A COMPUTER DISKETTE CONTAINING THE REQUIRED INFORMATION FROM EACH OF THE THREE DATA TABLES. COMPLETE THE INSTRUCTIONS FOR DISK SUBMISSIONS CAN BE OBTAINED FROM DLS UPON SPECIFIC REQUEST.

PLEASE DO NOT ATTEMPT TO COMPLETE THIS SECTION WITHOUT CAREFULLY READING THE INSTRUCTIONS FOR EACH FORM. INCOMPLETE OR INACCURATE DATA TABLES WILL BE RETURNED.

EACH DATA TABLE IS EXPLAINED AND ILLUSTRATED BY A SAMPLE DATA TABLE IN THE EMPLOYMENT REPORT INSTRUCTIONS.

NOTE: MAKE AS MANY COPIES OF EACH FORM AS YOU REQUIRE.

DEPARTMENT OF BUSINESS SERVICES  
DIVISION OF LABOR SERVICES

LESS THAN FIFTY (50) EMPLOYEES CERTIFICATE

Contractor/Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

If Subcontractor Identify Prime Contractor: \_\_\_\_\_

Contracting Agency: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Nature of Contract: \_\_\_\_\_

Names and contact information for all subcontractors, suppliers, manufacturers or vendors performing in excess of \$50,000 on this contract (if not known now, so state):

\_\_\_\_\_  
\_\_\_\_\_

I, (print the name of the authorized official signing) \_\_\_\_\_, hereby affirm that I am authorized by the above-named contractor to certify that said contractor currently employs \_\_\_\_\_ people. This affirmation is made in accordance with NYC Charter Chapter 56, Executive Order No. 50 (1990), the implementing Rules.

I, (print the name of authorized official signing) \_\_\_\_\_, understand that the WILLFUL OR FRAUDULENT FALSIFICATION OF ANY DATA OR INFORMATION SUBMITTED HERewith MAY RESULT IN THE TERMINATION OF ANY CONTRACT BETWEEN THE CITY AND THE BIDDER OF CONTRACTOR AND BAR THE BIDDER OR CONTRACTOR FROM PARTICIPATION IN ANY CITY CONTRACT FOR A PERIOD OF UP TO FIVE YEARS. FURTHER, SUCH FALSIFICATION MAY RESULT IN CRIMINAL PROSECUTION.

Sworn to before me  \_\_\_\_\_  
Authorized Signature, Title

This \_\_\_\_ day of \_\_\_\_\_, 200\_\_  \_\_\_\_\_  
Authorized Signature, Title

\_\_\_\_\_  
Notary Public Date \_\_\_\_\_

It is the responsibility of the contractor to promptly inform all proposed subcontractors that each subcontractor like the prime contractor must comply with the equal employment opportunity requirements of Chapter 56 E.O. 50 and the implementing Rules. Each covered subcontractor must submit a completed Employment Report for each of its operating facilities to the contracting agency before the fifth day following the award date (Comptroller's Office Registration Date) of the contract. DLS will review the subcontractor's Employment Report (s) for compliance.

**SPECIAL NOTICE TO VENDORS/SUPPLIERS  
WITH LESS THAN 150 EMPLOYEES**

Vendors or Suppliers with less than 150 employees at the facility(ies) performing on this contract need only complete Parts I and II (pages 1-7), the Signature Page (page 8) and the "Less Than 150 Employees Certificate" below for each applicable facility. DO NOT COMPLETE PART III (pages 9-11)

**NOTE: A separate Employment Report must be completed for each facility performing on the Contract.**

**LESS THAN 150 EMPLOYEES CERTIFICATE**

I, (fill in name of person signing) \_\_\_\_\_, hereby  
affirm that I am authorized by (contractor name) \_\_\_\_\_

\_\_\_\_\_ to certify that said contractor employs fewer than 150  
people at the following facility listed below:

| <u>Facility Address</u> | <u>Number of Employees</u> |
|-------------------------|----------------------------|
| _____                   | _____                      |
| _____                   | _____                      |

I, (print the name of authorized official signing) \_\_\_\_\_  
understand that the WILLFUL OR FRAUDULENT FALSIFICATION OF ANY DATA OR  
INFORMATION SUBMITTED HEREWITH MAY RESULT IN THE TERMINATION OF ANY  
CONTRACT BETWEEN THE CITY AND THE BIDDER OR CONTRACTOR AND BAR THE  
BIDDER OR CONTRACTOR FROM PARTICIPATION IN ANY CITY CONTRACT FOR A  
PERIOD OF UP TO FIVE YEARS. FURTHER, SUCH FALSIFICATION MAY RESULT IN  
CRIMINAL PROSECUTION.

Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

X \_\_\_\_\_  
Authorized Signature, Title

\_\_\_\_\_  
Date

**ATTENTION: THIS IS NOT A "LESS THAN 50 EMPLOYEES CERTIFICATE"**

JOB DESCRIPTION FORM

DO NOT COMPLETE THIS FORM UNLESS YOU ARE UNABLE TO ASSIGN A PARTICULAR  
JOB NUMBER/TITLE TO AN OCCUPATIONAL CATEGORY OR TO ASSIGN A CENSUS  
CODE TO A PARTICULAR JOB NUMBER/TITLE

Job Title:

Entry Level:                
                  YES    NO

Routine Duties:

Occasional Duties:

Requisite Skills and Experience:

Type(s) of Jobs From Which Promotions into this Job Occur:

|                            |                          |
|----------------------------|--------------------------|
| <u>      </u> Managerial   | <u>      </u> Technical  |
| <u>      </u> Professional | <u>      </u> Service    |
| <u>      </u> Clerical     | <u>      </u> Operatives |
| <u>      </u> Sales        | <u>      </u> Laborers   |

Job Titles From Which Promotions into this Job Occur:

Type(s) of Jobs To Which Promotions From this Job Occur:

|                            |                          |
|----------------------------|--------------------------|
| <u>      </u> Managerial   | <u>      </u> Technical  |
| <u>      </u> Professional | <u>      </u> Service    |
| <u>      </u> Clerical     | <u>      </u> Operatives |
| <u>      </u> Sales        | <u>      </u> Laborers   |

Job Titles to Which Promotions From this Job occur:



Please provide the following information which may be obtained from the Industrial Commercial Incentive Program Application.

[FOR ICIP APPLICANT/DEVELOPERS ONLY]

(a) Block (s) \_\_\_\_\_ (b) Lot(s) \_\_\_\_\_

(c) Property Address/Description \_\_\_\_\_

\_\_\_\_\_ (d) Borough \_\_\_\_\_

(e) Preliminary Application Number \_\_\_\_\_

(f) Applicant's Name \_\_\_\_\_

(g) Address \_\_\_\_\_

(h) Contact Person \_\_\_\_\_

(i) Telephone Number \_\_\_\_\_

(j) SS No. /Employer ID No. \_\_\_\_\_

(k) Consultant (s) \_\_\_\_\_

(l) Estimated Cost of Construction \_\_\_\_\_

(m) Projected Commencement of Work Date \_\_\_\_\_

(n) Projected Date of Completion \_\_\_\_\_

(o)  Construction Managers  General Contractors

(p) Name \_\_\_\_\_

(q) Address \_\_\_\_\_

(r) Contact Person \_\_\_\_\_

(s) Proposed Contract Amount \_\_\_\_\_

(t) Are subcontractors being used on this project? \_\_\_\_ yes [ ] \_\_\_\_ no

(u) Name \_\_\_\_\_

(v) Address \_\_\_\_\_

(w) Contact Person \_\_\_\_\_

(x) Proposed Contract Amount \_\_\_\_\_

(Use Additional Pages to Record Any Additional Information)

FORM A: JOB CLASSIFICATION AND  
 INCUMBENTS FORM CONTRACTOR NAME \_\_\_\_\_

Occupational Category (circle one) MGRS PROF TECH SAL CLER SERV FARM  
 CRFT OPER/LABR

Total number of incumbent(s)  
 in this category \_\_\_\_\_ FACILITY LOCATION: \_\_\_\_\_

| (1)<br>Company<br>Job Title | (2)<br>Compan<br>y<br>Job No. | (3)<br>Census<br>Code | (4)<br>Job Group Assignment for this occupational<br>category |   |   |   |   | (5)<br>Total in<br>Title |
|-----------------------------|-------------------------------|-----------------------|---|---|---|---|---|--------------------------|
|                             |                               |                       | 1   | 2 | 3 | 4 | 5 |                          |
|                             |                               |                       |   |   |   |   |   |                          |
|                             |                               |                       |   |   |   |   |   |                          |
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|                             |                               |                       |   |   |   |   |   |                          |

Please include on each sheet information concerning only 1 occupational category (see ER instructions Appendix A, page 21 for the Occupational Categories)

\*\* See ER Instructions Appendix A, for Census Codes  
 NOTE: Make as many copies of this form as you require for each occupational category.

| MALES                 |                        |             |              |                         | FEMALES                |                         |              |               |                         |
|-----------------------|------------------------|-------------|--------------|-------------------------|------------------------|-------------------------|--------------|---------------|-------------------------|
| (6)<br>W-non<br>-Hisp | (7)<br>B-non-<br>Hisp. | (8)<br>Hisp | (9)<br>Asian | (10)<br>Native<br>Amer. | (11)<br>W-non<br>-Hisp | (12)<br>B-non-<br>Hisp. | (13)<br>Hisp | (14)<br>Asian | (15)<br>Native<br>Amer. |
|                       |                        |             |              |                         |                        |                         |              |               |                         |
|                       |                        |             |              |                         |                        |                         |              |               |                         |
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|                       |                        |             |              |                         |                        |                         |              |               |                         |
|                       |                        |             |              |                         |                        |                         |              |               |                         |

Please include on each sheet information concerning only 1 occupational category (see ER instructions Appendix A, page 21 for the Occupational Categories)

\*\* See ER Instructions Appendix A, for Census Codes  
 NOTE: Make as many copies of this form as you require for each occupational category.

CONTRACTOR NAME: \_\_\_\_\_

FORM B: NEW HIRES FORM/TRACKING EMPLOYEES HIRED OVER THE LAST THREE YEARS

FACILITY LOCATION: \_\_\_\_\_

| Employee Characteristics          |                   |                                      | At-Hire Information    |                                    |                                       |                                    | Current Information                               |                                    |
|-----------------------------------|-------------------|--------------------------------------|------------------------|------------------------------------|---------------------------------------|------------------------------------|---|------------------------------------|
| (1)<br>SSN or<br>Employee ID<br># | (2)<br>Sex<br>(a) | (3)<br>Race<br>Ethnic<br>Code<br>(b) | (4)<br>Year of<br>Hire | (5)<br>Company<br>Job # at<br>Hire | (6)<br>Matching<br>Census<br>Code (c) | (7)<br>Weekly<br>Salary<br>at Hire | (8)<br>Current<br>Company<br>Job<br>Number<br>(d) | (9)<br>Weekly<br>Current<br>Salary |
|                                   |                   |                                      |                        |                                    |                                       |                                    |   |                                    |
|                                   |                   |                                      |                        |                                    |                                       |                                    |   |                                    |
|                                   |                   |                                      |                        |                                    |                                       |                                    |   |                                    |
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|                                   |                   |                                      |                        |                                    |                                       |                                    |   |                                    |
|                                   |                   |                                      |                        |                                    |                                       |                                    |   |                                    |

I certify that there were no new hires in 199\_\_/199\_\_  
NOTE: Make as many copies of this form as you require.

(a)  
M: Male  
F: Female

(b)  
W: White  
B: Black  
H: Hispanic  
A: Asian  
N: Native  
American

(c)  
see Appendix  
B for a listing  
of the 1990  
Census  
codes

(d)  
V: Voluntarily terminated employment  
(Resigned)  
I: Involuntarily terminated employment  
(Discharge/Lay off)  
R: Retired  
D: Deceased

CONTRACTOR NAME: \_\_\_\_\_

FORM C: TERMINATIONS FOR EMPLOYMENT  
 TERMINATIONS OVER THE LAST THREE YEARS

FACILITY LOCATION: \_\_\_\_\_

| (1)<br>SSN/<br>Employee<br>ID # | (2)<br>Sex<br>(a) | (3)<br>Race<br>Ethnic<br>Code<br>(b) | (4)<br>Age at<br>Termination | (5)<br>Year of<br>Hire | (6)<br>Last<br>Company<br>Job<br>Number | (7)<br>Year of<br>Termination | (8)<br>Type of<br>Termination<br>(c) |
|---------------------------------|-------------------|--------------------------------------|------------------------------|------------------------|---|-------------------------------|--------------------------------------|
|                                 |                   |                                      |                              |                        |   |                               |                                      |
|                                 |                   |                                      |                              |                        |   |                               |                                      |
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|                                 |                   |                                      |                              |                        |   |                               |                                      |
|                                 |                   |                                      |                              |                        |   |                               |                                      |

I certify that there were no new hires in 199\_\_/199\_\_

NOTE: Make as many copies of this form as you require.

(a)  
 M: Male  
 F: Female

(b)  
 W: White (non-Hisp)  
 B: Black (non-Hisp)  
 H: Hispanic  
 A: Asian

(c)  
 V: Voluntarily terminated employment (Resigned)  
 I: Involuntarily terminated employment (Discharge/retirement)  
 R: Retired  
 D: Deceased

AGREEMENT OF LEASE

between

The CITY OF NEW YORK

Acting By Its

Commissioner of Small Business Services,

Landlord,

and

SIMS MUNICIPAL RECYCLING OF NEW YORK LLC,

Tenant.

Premises:

30<sup>th</sup> Street Pier, South Brooklyn Marine Terminal  
Block 662, part of Lot 1, Borough of Brooklyn,  
City of New York

Dated as of \_\_\_\_\_, 2008

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