

CLOSING ITEM NO.: A-4

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TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

AND

RJC EQUITIES LLC

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LEASE AGREEMENT

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DATED AS OF FEBRUARY 1, 2016

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RESPECTING THE PREMISES LOCATED IN THE TOWN OF  
BABYLON, SUFFOLK COUNTY, NEW YORK.

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of February 1, 2016 (the "Lease Agreement") by and between TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 47 West Main Street, Suite 3, Babylon, New York 11702 (the "Agency"), and RJC EQUITIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1970 New Highway, Farmingdale, New York 11735 (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 177 of the Laws of 1973 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, by resolution adopted by the members of the Agency on January 26, 2016 (the "Preliminary Inducement Resolution"), the Agency determined to accept an application (the "Application") from the Company and Crescent Packing Corp. (the "Operator"), on behalf of themselves and/or entities formed on behalf of the foregoing, and the Agency further agreed, subject to numerous conditions, to consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in approximately 1.84 acres of real estate located at 30 Central Avenue (Tax Map #0100-4-1-18), in the Town of Babylon, Suffolk County, New York (the "Land") and the existing approximately 38,000 square foot building located thereon (the "Facility"); (2) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various

machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), such Project Facility to be used as offices, storage and freezer facilities; (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes, mortgage recording taxes and real property taxes (the "Project Financial Assistance"); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (D) the lease (with an obligation to purchase) of certain equipment to the Operator (the "Operator Equipment"); and

WHEREAS, the Chief Executive Officer of the Agency (A) caused notice of public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on February 9, 2016 to the chief executive officers of the County of Suffolk (the "County"), the Town of Babylon (the "Town"), the Half Hollow Hills Central School District (the "School District") and the Half Hollow Hills Public Library (the "Library"), (B) caused notice of the Public Hearing to be published on February 13, 2016 in Newsday, a newspaper of general circulation available to the residents of the Town of Babylon, New York, and (C) conducted the Public Hearing on February 23, 2016 at 10:00 a.m. at the offices of the Agency, 47 West Main Street, Babylon, New York 11702; and

WHEREAS, the Agency previously has adopted a Uniform Tax Exemption Policy (the "Policy") to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements; and

WHEREAS, the payment in lieu of tax agreement to be entered into by the Agency and the Company on the date hereof deviates from the Policy; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution, the Chairman of the Agency (A) caused notice of the meeting of the Agency to discuss a deviation from the Policy to be mailed on February 9, 2016 to the chief executive officer of the County, the Town, the School District and the Library, and (B) conducted such meeting on February 23, 2016 at 7:00 o'clock p.m., local time, at the Law Offices of John Braslow, 816 Deer Park Avenue, North Babylon, New York 11703; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), and pursuant to a resolution duly adopted by the members of the Agency on January 26, 2016, the members of the Agency determined that the Project constitutes a "Type II Action" (as said quoted term is defined in SEQRA) and therefore no further environmental review of the Project is required under SEQRA; and

WHEREAS, by resolution adopted by the members of the Agency on February 23, 2016 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into

this Lease Agreement and certain other documents related thereto, to the Financial Assistance and to the Project; and

WHEREAS, the Agency now proposes to acquire the leasehold interest created pursuant to the Underlying Lease (as defined below) from the Company, to undertake the Project, to appoint the Company as agent of the Agency to undertake the acquisition, reconstruction and installation of the Project Facility, and to lease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, reconstruction and installation of the Project Facility and to lease the Project Facility from the Agency, all pursuant terms and conditions hereinafter set forth in this Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of this Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency a certain underlying lease to agency dated as of February 1, 2016 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on the Land (collectively, the "Premises") for a lease term ending on the date of termination of the Payment in Lieu of Tax Agreement, (B) the Company will execute and deliver to the Agency a bill of sale dated as of February 1, 2016 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (C) the Operator will execute and deliver to the Agency a bill of sale dated as of February 1, 2016 (the "Tenant Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Operator in the Operator Equipment, (D) the Agency will execute and deliver to the Operator an equipment lease agreement dated as of February 1, 2016 (the "Equipment Lease Agreement") by and between the Agency and the Operator, pursuant to which, among other things, the Agency agrees to lease the Operator Equipment to the Operator and the Operator agrees to lease the Operator Equipment from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project, (E) the Operator will execute and deliver to the Agency a tenant agency compliance agreement dated as of February 1, 2016 (the "Tenant Agency Compliance Agreement") by and between the Agency and the Operator, (F) the Company, the Operator and the Agency will execute and deliver a payment in lieu of tax agreement dated as of February 1, 2016 (the "Payment in Lieu of Tax Agreement") by and among the Agency, the Operator and the Company, pursuant to which the Company and the Operator will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (G) the Agency will mail to the assessor a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (H) the Agency will mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of the Payment in Lieu of Tax Agreement, (I) the Agency, the Company and the Operator will execute a sales tax benefit agreement dated as of February 1, 2016 (the "Sales Tax Benefit Agreement") delegating to the Company and the Operator the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and such other parties as the Company and the Operator choose, (J) the Agency will execute and deliver to the

Company and the Operator a sales tax exemption letter (the "Sales Tax Exemption Letter") outlining the procedure for utilizing the sales and use tax exemption which forms a part of the Financial Assistance, and (K) the Agency will file with the State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and deliver a copy of the Thirty-Day Sales Tax Report to the Company and the Operator; and

WHEREAS, in order to obtain financing for the Project, the Company will obtain a loan in the aggregate principal sum of \$3,080,000 (the "Loan") from TD Bank, N.A. (the "Lender"); and

WHEREAS, in order to secure the Loan, the Company and the Agency will execute and deliver to the Lender a mortgage and security agreement dated February 29, 2016 (the "Mortgage"), which Mortgage grants to the Lender a mortgage lien on and security interest in the Project Facility and assigns to the Lender all leases and rents relating to the Project Facility (other than the Underlying Lease and the Lease Agreement), and such other documents as may be requested by the Lender in connection with the Loan (collectively, the "Lender Documents"); and

WHEREAS the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

WHEREAS, all things necessary to constitute this Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:



## ARTICLE I

### DEFINITIONS

**SECTION 1.1. DEFINITIONS.** The following words and terms used in this Lease Agreement shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 177 of the Laws of 1973 Laws of the State, constituting Section 907-a of the General Municipal Law of the State, as amended from time to time.

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

“Agency” means (A) Town of Babylon Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Town of Babylon Industrial Development Agency or its successors or assigns may be a party.

“Agency Documents” means the Underlying Lease, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Environmental Compliance and Indemnification Agreement, the Sales Tax Benefit Agreement, the Mortgage, the Equipment Lease Agreement and the Tenant Agency Compliance Agreement.

“Annual Period” means (i) that period commencing on the Commencement Date and ending on December 31, 2016 which shall be the first Annual Period, and (ii) thereafter each Annual Period commencing on January 1 and ending on the next succeeding December 31, with the final Annual Period to commence on January 1, 2031 and end on February 28, 2031.

“Annual Period Eligible Employee” shall have the meaning ascribed to such term in Section 8.12 hereof.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if

the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi judicial Governmental Authority.

“Approving Resolution” means the resolution duly adopted by the Agency on February 23, 2016 authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

“Assignment to Company” means the assignment from the Agency to the Company, substantially in the form attached as Exhibit D to the Lease Agreement, which assignment is intended to convey to the Company, upon certain termination of the Lease Agreement, all title and interest of the Agency in the Project Facility, including the leasehold interest created pursuant to the Underlying Lease.

“Authorized Representative” means the person or persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (A) the Agency by its Chairman or Vice-Chairman or such other person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by any member or such other person as may be authorized in writing by any member of the Company to act on behalf of the Company.

“Base Employment Number” means, for each Annual Period beginning after the Completion Date, as follows:

<u>Annual Period after Completion Date</u>	<u>Base Employment Number</u>
1	5
2	10
3	12
4	14
5	16
Thereafter	16

“Base Employment Reduction” means, for any Annual Period, the difference, if any (but not less than 0), derived from subtracting the Annual Period Eligible Employees for such Annual Period from the then applicable Base Employment Number.

“Base Employment Reduction Percentage” means the percentage derived by dividing the Base Employment Reduction by the Base Employment Number.

**“Basic Documents”** means the Underlying Lease, the Lease Agreement, the Bill of Sale, the Environmental Compliance and Indemnification Agreement, the Equipment Lease Agreement, the Tenant Bill of Sale to Agency, the Tenant Agency Compliance Agreement, the Payment in Lieu of Tax Agreement, the Sales Tax Benefit Agreement, the Mortgage and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

**“Bill of Sale to Agency”** means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company’s interest in the Equipment to the Agency.

**“Bill of Sale to Company”** means the bill of sale from the Agency to the Company conveying all of the Agency’s interest in the Equipment to the Company, substantially in the form attached as Exhibit E to the Lease Agreement.

**“Business Day”** means a day on which banks located in the Town of Babylon, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

**“Closing”** means the closing at which the Company Documents and the Operator Documents are executed and delivered by the parties thereto.

**“Closing Date”** means the date of the Closing.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

**“Commencement Date”** means February 29, 2016.

**“Company”** means RJC Equities LLC, a limited liability company duly organized and existing under the laws of the State, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

**“Company Documents”** means the Underlying Lease, the Lease Agreement, the Bill of Sale, the Payment in Lieu of Tax Agreement, the Environmental Compliance and Indemnification Agreement, the Sales Tax Benefit Agreement, the Mortgage and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

**“Company Group Entity”** means the Company and its Affiliates.

**“Completion Date”** means the earliest to occur of (A) February 28, 2017 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

**“Condemnation”** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

**“Construction Period”** means from the date hereof to the Completion Date.

**“Default Interest Rate”** means a per annum rate of interest equal to one percent (1%) plus the Prime Rate, or the maximum rate of interest permitted by law, whichever is less.

**“Eligible Employees”** means an employee of a Company Group Entity (i) located and employed exclusively in the Town, (ii) having his or her principal base of operations in the Town, (iii) whose income as an Employee of the Company Group Entity is paid exclusively from such Company Group Entity’s Town based payroll, and (iv) who do not constitute Ineligible Employees.

**“Environmental Compliance and Indemnification Agreement”** means the environmental compliance and indemnification agreement dated as of February 1, 2016, by and among the Agency, the Company and the Operator, as such agreement may be amended or supplemented from time to time.

**“Equipment”** means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Lease Agreement.

**“Equipment Lease Agreement”** means the equipment lease agreement dated as of February 1, 2016, by and between the Agency and the Operator, as such agreement may be amended or supplemented from time to time.

**“Event of Default”** means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

**“Facility”** means the approximately 38,000 square foot building located on the Land.

**“Financial Assistance”** shall have the meaning assigned to such term in the sixth recital clause to this Lease Agreement.

**“Full-Time Employee”** means, with respect to an Annual Period, an individual on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a “full-time basis” (i.e., working at least a 35-hour week, subject to customary vacation, holiday and sick leave).

“Full-Time Equivalent Employee” means, with respect to an Annual Period, two (2) individuals on the payroll of, receiving customary benefits from, and directly employed during such Annual Period by, any Company Group Entity (and excluding any individuals employed by temporary employment or similar agencies) and each of whom works within the Town for any Company Group Entity during such Annual Period on a “part-time basis” (i.e., working at least a 20-hour week, subject to customary vacation, holiday and sick leave).

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to the settlement of any insurance or Condemnation award.

“Hazardous Materials” means all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

“Indebtedness” means (A) (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Company Documents, and (2) all interest accrued on any of the foregoing; and (B) (1) the monetary obligations of the Operator to the Agency and its members, officers, agents, servants and employees under the Equipment Lease Agreement and the other Operator Documents, and (2) all interest accrued on any of the foregoing.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

“Ineligible Employee” means any Full-Time Equivalent Employees who exceed in the aggregate ten percent (10%) of the total Annual Period Eligible Employees for such Annual Period.

“Land” means the parcel of land located at 30 Central Avenue, in the Town of Babylon, Suffolk County, New York, as more particularly described on Exhibit A attached to this Lease Agreement.

“Lease Agreement” means this lease agreement dated as of February 1, 2016 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the

Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Lease Term” means the period from the Closing Date through the earlier to occur of (1) February 28, 2031 or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

“Lender” means TD Bank, N.A. and its successors and assigns.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means a loan from the Lender to the Company in the amount of \$3,080,000.

“Loss Event” means shall have the meaning specified in Section 7.1(A) and Section 7.2(B) hereof.

“Mortgage” means that certain mortgage and security agreement dated February 29, 2016 granted by the Agency and the Company to the Lender to secure the Loan, as such mortgage may be amended or supplemented from time to time.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Non-Relocation Reduction” means any Base Employment Reduction in an Annual Period for any other than a Relocation Reduction.

“Operator” means Crescent Packing Corp.

“Operator Documents” means the Tenant Bill of Sale to Agency, the Equipment Lease Agreement, the Tenant Agency Compliance Agreement, the Payment in Lieu of Tax Agreement, the Environmental Compliance and Indemnification Agreement, the Sales Tax Benefit Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Operator Equipment” means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Operator pursuant to the Equipment Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to the Equipment Lease Agreement, including without limitation, all the Property described in Exhibit B attached to the Equipment Lease Agreement.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of February 1, 2016 by and among the Agency, the Company and the Operator, pursuant to which the Company and the Operator have agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, to the extent permitted by Section 8.8 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.3(B) of the Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document and (E) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

“Person” means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means the description of the Project appearing in the fifth recital clause to the Lease Agreement.

“Preliminary Inducement Resolution” means the resolution duly adopted by the Agency on January 26, 2016 (1) determining to accept an application from the Company and the Operator, on behalf of themselves and/or entities formed on behalf of the foregoing, (2) agreeing, subject to numerous conditions, to consider undertaking the Project, and (3) determining that the Project constitutes a “Type II Action” (as said quoted term is defined in SEQRA) and therefore no further environmental review of the Project is required under SEQRA.

“Premises” means the Property leased to the Agency pursuant to the Underlying Lease.

“Prime Rate” means (i) if no lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a lender exists, the rate designated by the lender from time to time as its “prime rate”.

“Project” means the project undertaken by the Agency consisting of: (A) (1) the acquisition of an interest in the Land and the Facility; (2) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of the Equipment, such Project Facility to be used as offices, storage and freezer facilities; (B) the granting of certain “financial assistance” (within the meaning of

section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes, mortgage recording taxes and real property taxes (collectively, the “Financial Assistance”); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; (D) the lease (with an obligation to purchase) of certain Equipment to the Operator (the “Operator Equipment”).

“Project Facility” means the Land, the Facility and the Equipment.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Public Purposes” means the State’s objective to create industrial development agencies for the benefit of the several counties, cities, towns and villages in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and buildings or other improvements, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Real Property Tax Exemption Form” means a New York State Board of Real Property Services Form RP-412-a relating to the Project Facility.

“Recapture Event” shall have the meaning ascribed to such term in Section 8.17 hereof.

“Relocation Reduction” means a Base Employment Reduction resulting from (i) any transfer or relation of Eligible Employees to a location outside of the Town, (ii) any reduction in the number of Eligible Employees resulting from the hiring of replacement or substituted employees at a location outside of the Town, or (iii) any transfer, relation or establishment of operations or facilities to a location outside of the Town.

“Sales Tax Benefit Agreement” means the sales tax benefit agreement, dated as of February 1, 2016, by and among the Company, the Operator and the Agency, as amended from time to time.

“Sales Tax Exemption Letter” means the sales and use tax exemption letter of the Agency dated February 29, 2016, which outlines the procedure for utilizing the sales and use tax exemption that forms a part of the Financial Assistance.

“SEQRA” means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

“State” means the State of New York.



**“Tenant Bill of Sale to Agency”** means the bill of sale delivered on the Closing Date from the Operator to the Agency conveying all of the Operator’s interest in the Operator Equipment to the Agency.

**“Tenant Agency Compliance Agreement”** means the tenant agency compliance agreement, dated as of February 1, 2016, between the Operator and the Agency, as amended from time to time.

**“Term”** means the term of the Underlying Lease.

**“Termination of Lease Agreement”** means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of the lease agreement, substantially in the form attached as Exhibit F to the Lease Agreement.

**“Town”** means the Town of Babylon, New York.

**“Unassigned Rights”** means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.3, 6.4, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.16, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 2.2(F), 3.3, 4.1, 5.3(B)(2), 5.3(O), 6.5(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.7 of the Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

**“Underlying Lease”** means the underlying lease to Agency dated as of February 1, 2016 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time.

**SECTION 1.2. INTERPRETATION.** In this Lease Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Lease Agreement, refer to this Lease Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Lease Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and, vice versa; and

(D) any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY.** The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby have been duly authorized, executed and delivered by the Agency.

(B) The Agency will cause the Project Facility to be acquired, reconstructed and installed and will sublease the Project Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(C) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument.

(D) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(E) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to operate the Project Facility in the Town of Babylon, New York.

**SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.** The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State, is qualified and authorized to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Lease Agreement and the other Company Documents and to carry out its obligations hereunder and thereunder. By proper action of its members, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Company Documents.

(B) Neither the execution and delivery of this Lease Agreement or the other Company Documents, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Company Documents will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The granting of the Financial Assistance with respect to the Project is reasonably necessary to preserve the competitive position of the Operator in its respective industry.

(D) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project.

(E) The Company Documents constitute, or, upon their execution and delivery in accordance with the terms thereof, will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(F) The Project Facility is, and so long as this Lease Agreement shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Company Documents.

(G) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(H) Based on its classification as a Type II Action under SEQRA, the Project will not have a “significant effect on the environment” (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the Preliminary Inducement Resolution under SEQRA applicable to the acquisition, reconstruction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date the Project was classified as a Type II Action.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Agency.

(J) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the Project Facility is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(K) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires the Company, as agent of the Agency, to file within thirty (30) days of the date the Company is appointed the agent of the Company, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales and use taxes as a result of such appointment as agent, indicating an estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(L) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

(M) As a condition precedent to the grant by the Agency to the Company of any State sales and use tax exemption with respect to the Project, the Company acknowledges and agrees to all terms and conditions set forth in Section 875(3) of the Act. The provisions of Section 875(3) of the Act are hereby incorporated by reference. As part of such condition precedent:

(1) The Company shall not take any State sales and use tax exemptions (i) to which it is not entitled, (ii) which are in excess of the amount authorized by the Agency in reliance on the Application or (iii) which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Company Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Recapture Amount (as defined in the Sales Tax Benefit Agreement hereof), and shall, upon the Agency's request, promptly pay to the Agency any Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise, as provided in Section 8.10(e) hereof. The Company acknowledges and agrees that the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(N) The total cost of the Project Facility, as of the date of this Lease Agreement, is estimated to be \$6,850,000.

(O) The amount of State sales and use tax exemption sought from the Agency as part of the approved financial assistance is approximately \$58,000.

## ARTICLE III

### CONVEYANCE AND USE OF PROJECT FACILITY

**SECTION 3.1. CONVEYANCE TO THE AGENCY.** Pursuant to the Underlying Lease the Company has or will convey, or will cause to be conveyed, to the Agency a leasehold interest in the Land and all improvements located or to be located thereon. Pursuant to the Bill of Sale to Agency the Company has or will convey, or will cause to be conveyed, to the Agency title to the Equipment. The Company hereby represents and warrants that it has a good and marketable fee interest in the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest a leasehold interest in the Agency and shall take all action necessary or appropriate to protect such leasehold interest against claims of any third Persons. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Project Facility, except for Permitted Encumbrances.

**SECTION 3.2. USE OF PROJECT FACILITY.** Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Company Documents or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project.

**SECTION 3.3. HAZARDOUS MATERIALS.** (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and, to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility to be kept free of all Hazardous Materials, except as permitted in accordance with Applicable Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility or onto any other property.

(C) The Company shall comply with, and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by

whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.

(D) To the extent required by any State or federal environmental regulator, the Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (a) in accordance with all Applicable Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities and (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials used, transported, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility which are on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) In the event the Project Facility is foreclosed by the Agency, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Project Facility to the purchaser free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any federal, State or local laws, ordinances, rules and regulations governing the use and storage such materials), so that the condition of the Project Facility shall conform with all Applicable Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents or representatives may at any reasonable time and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Applicable Laws. The Agency may not exercise this right more than once a year.

**SECTION 3.4. NON-MERGER.** During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate



created by this Lease Agreement and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

**SECTION 3.5. COMPLIANCE WITH UNDERLYING LEASE.** (A) Notwithstanding the granting of the leasehold interest created by the Underlying Lease in the Premises to the Agency pursuant to the Underlying Lease, the Company agrees, in consideration of the undertakings of the Agency set forth herein, that the Company will be and remain solely liable under the Underlying Lease for the performance of all covenants, agreements, obligations and duties of the Agency as tenant under the Underlying Lease, including but not limited to the making of all rental and other payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency as tenant under the Underlying Lease, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Company Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all rents, additional rents and other sums required to be paid by the Agency as tenant under and pursuant to the provisions of the Underlying Lease and (2) diligently perform and observe all of the terms, covenants and conditions of the Underlying Lease on the part, of the Agency, as tenant thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the landlord under the Underlying Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

**SECTION 3.6. PUBLIC AUTHORITIES LAW REPRESENTATIONS.** The parties hereto hereby acknowledge and agree that the Project Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Project Facility and the interests therein are securing the financial obligations of the Company. The Project Facility and the interests therein secure the obligations of the Company to the Agency under the Payment in Lieu of Tax Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation to acquire, renovate, equip and maintain the Project Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

**SECTION 3.7. SUBORDINATION OF LEASE AGREEMENT.** This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to the Mortgage and any mortgage or mortgages which may be granted by the Agency and the Company on the Project Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

## ARTICLE IV

### UNDERTAKING AND COMPLETION OF THE PROJECT

**SECTION 4.1. ACQUISITION, RECONSTRUCTION AND INSTALLATION OF THE PROJECT FACILITY.** (A) The Company shall, on behalf of the Agency, promptly acquire, reconstruct, and install the Project Facility, or cause the acquisition, reconstruction and installation of the Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor.

(E) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Company Documents, and the Company hereby accepts such appointment: (1) to acquire, reconstruct and install the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite and proper, all for the acquisition, reconstruction and installation of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition, reconstruction and installation of the Project Facility from funds made available therefor in accordance with this Lease Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, reconstruction and installation of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company and the Operator from purchasing motor vehicles, including any cars, trucks, vans or buses which are

licensed by the Department of Motor Vehicles for use on public highways or streets as part of the Equipment and the Operator Equipment and/or utilizing the sales tax exemption for the purchase or lease of any motor vehicles described above.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the reconstruction, renovation and equipping of the Project Facility and shall include in all construction contracts all provisions that are required to be inserted therein by such provisions. Except as provided in the preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, reconstructed and installed at the Company's cost shall immediately upon such acquisition, reconstruction or installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease Agreement.

**SECTION 4.2. COMPLETION OF THE PROJECT FACILITY.** The Company will proceed with due diligence to commence and complete the acquisition, reconstruction and installation of the Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, reconstruction and installation of the Project Facility has been completed, with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by a certificate of occupancy, or a letter from the local Governmental Authority stating that no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation

and use of the Project Facility for its intended purposes have been issued. The Company agrees to use commercially reasonable efforts to cause the completion of the acquisition, reconstruction and installation of the Project Facility on or before February 28, 2017 unless such date is extended by the Agency in its sole discretion.

**SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a default by any contractor, subcontractor or materialman under a contract made by it in connection with the acquisition, reconstruction and installation of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialmen so in default and against each surety for the performance of such contract. The Company, in its own name or, with the prior written consent of the Agency, in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency in writing of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility, and thereafter be paid to the Company for its own use.

**SECTION 4.4. CONSTRUCTION SIGNAGE.** The Agency shall have the right to erect on the Project Facility site, subject to the approval of location by the Company, at the Agency's own cost and expense, an appropriate sign stating that financial assistance for the Project Facility has been provided through the Agency.

## ARTICLE V

### DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE PROJECT FACILITY. The Agency hereby leases to the Company, and the Company hereby agrees to rent and lease from the Agency, the Agency's interest in the Project Facility, subject only to Permitted Encumbrances.

SECTION 5.2. DURATION OF THE LEASE TERM; QUIET ENJOYMENT. (A) The Agency shall deliver to the Company sole and exclusive possession of the Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) February 28, 2031 or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease Agreement and will, at the written request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) Base Rent. The Company shall pay Base Rent for the Project Facility as follows: on the Commencement Date, the Company shall pay, as the Base Rent due hereunder, (1) a single lump sum basic rental payment, equal to the Agency's administrative fee relating to the Project; and (2) the fees and expenses of counsel to the Agency relating to the Project.

(B) Additional Rent. Throughout the term of this Agreement, the Company shall pay to the Agency any additional amounts (including amounts payable under Section 6.7 hereof) required to be paid by the Company to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

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

(D) Rental Payments Payable Absolutely Net. The obligation of the Company to pay Rental Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and

all costs, expenses and charges of any kind and nature relating to the Project Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Company and the Agency shall be indemnified by the Company for, and the Company shall hold the Agency harmless from, any such costs, expenses and charges.

**SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.** (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Project Facility, or any other liability of the Agency to the Company.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

**SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.** (A) During the term of this Lease Agreement, the Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Project Facility in a sound and economic manner.

(B) With the written consent of the Agency, which shall not be unreasonably withheld or conditioned, or its consideration unreasonably delayed, the Company from time to time may make any structural additions, modifications or improvements to the Project Facility or any part thereof in excess of \$250,000, provided such actions do not adversely affect the structural integrity or value of the Project Facility. The Agency's consent shall not be required for alterations, modifications and improvements to the Project Facility or any part thereof which are non-structural in nature and which do not have a cost in the aggregate in excess of \$250,000. The Company may not make any changes to the footprint of the Project Facility, any additions expanding the square footage of the Project Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Project Facility, which will materially and/or adversely affect the structural integrity or value of the Project Facility without the prior written consent of the Agency, which such consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Project Facility and a leasehold interest therein shall vest in the Agency immediately upon the Company's obtaining an interest in such property. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency a leasehold interest to such property.

**SECTION 6.2. INSTALLATION OF ADDITIONAL EQUIPMENT.** Subject to the provisions of Section 8.16 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Project Facility (which may be attached or affixed to the Project Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Project Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Project Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall adversely affect the structural integrity of the Project Facility or impair the overall operating efficiency of the Project Facility for the purposes for which it is intended, and provided further, that if any damage to the Project Facility is occasioned by such removal, the Company agrees promptly to repair such damage at its own expense.

**SECTION 6.3. TAXES, ASSESSMENTS AND UTILITY CHARGES.** (A) The Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Project Facility or any part or component thereof, or the rental or sale of the Project Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Project Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the Payment in Lieu of Tax Agreement; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(B) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Project Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency or any Lender.

(C) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts.

(D) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency and the Lender, if any, official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency and any such Lender evidencing payment of any tax.

**SECTION 6.4. INSURANCE REQUIRED.** During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company and the Agency as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage



endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, reconstruction or installation of the Project Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Project Facility.

(C) (1) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage); and (2) blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(D) During the Construction Period, if any (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

Premises and Operations  
Products and Completed Operations  
Owners Protective  
Contractors Protective  
Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage (including completed operations)  
Explosion Hazard Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (ii) and (iii) above with a limit of not less than \$5,000,000.

(E) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(F) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE COMPANY'S BUSINESS OR INTEREST.

SECTION 6.5. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Agency as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.4 and 6.5 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced, or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.4 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

SECTION 6.6. APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.4(A) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Section 6.4(B) and 6.4(C)

hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**SECTION 6.7. PAYMENTS IN LIEU OF REAL ESTATE TAXES.** (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement will be executed with respect to the Project Facility, and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Project Facility on the Closing Date. Until the expiration date of any such Payment in Lieu of Tax Agreement, the Agency and the Company hereby agree that the Company and the Operator (or any subsequent user of the Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in such Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) a payment in lieu of tax agreement shall not have been entered into by the Agency, the Company and the Operator, or if entered into the payment in lieu of tax agreement shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts as would result from taxes being levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if the Agency did not have a leasehold interest in the Project Facility. It is agreed that the Agency, in cooperation with the Company, (a) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if the Project Facility were owned by the Company and not deemed under the jurisdiction, control or supervision of the Agency by the appropriate officer or officers of any of the Taxing Entities as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective tax rate or rates of the Taxing Entities that would be applicable to the Project Facility if so privately owned, (c) shall cause the appropriate officer or officers of the Taxing Entities charged with the duty of levying and collecting such taxes to submit to the Company, when the respective levies are made for purposes of such taxes upon Property privately owned as aforesaid, statements specifying the amounts and due dates of such taxes which the Taxing Entities would receive if such Project Facility were so privately owned by the Company and not deemed under the jurisdiction, control or supervision of the Agency, and (d) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company and the Operator shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of taxes with respect to the Project Facility required by Section 6.7(B) of this Lease Agreement to be paid to the Taxing Entities, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the State Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the Project Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made.

(D) Pursuant to Section 874(5) of the Act, if the Company and the Operator shall fail to make or cause to be made any payments in lieu of taxes required under this Section 6.7 and the Payment in Lieu of Tax Agreement, the amount or amounts so in default shall continue as a joint and several obligation of the Company and the Operator until fully paid, and the Company and the Operator hereby agree to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company and the Operator shall fail to make any payment required by this Section 6.7 when due and such delinquency shall continue beyond the first month, the Company's and the Operator's joint and several obligation to make the payment so in default shall continue as a joint and several obligation of the Company and the Operator to the affected Taxing Entity until such payment in default shall have been made in full, and the Company and the Operator shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) the Default Interest Rate, or (b) the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

**SECTION 7.1. DAMAGE OR DESTRUCTION.** (A) If the Project Facility shall be damaged or destroyed, in whole or in part (a "Loss Event"):

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

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is replaced, rebuilt or restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to prepay the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less

than the amount necessary to prepay Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purpose.

(D) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.4(A) hereof.

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation (a "Loss Event"):

- (1) the Agency shall have no obligation to restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is restored);
- (3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Project Facility (excluding any part of the Land and the Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining

on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

**SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY.** All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein.

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the



Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.4(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(E) Notwithstanding anything contained in this Lease Agreement to the contrary, whenever the Company is obligated under this Lease Agreement to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company defense. The Company shall have the right to defend the Agency its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorney's fees of the Agency its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(F) Notwithstanding the provisions of subsection (E) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this Lease Agreement, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, reasonable attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper

maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED.** The Company agrees that, during the term of this Lease Agreement, it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, without notice to the Agency and obtaining the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, and unless such merged or combined entity shall reaffirm the Company's obligations hereunder.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. Without limiting the foregoing, the Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Basic Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.** The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for this the benefit of the Agency, that it will, during the term of this Lease Agreement, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Company Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

**SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS.** Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith, and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

**SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS.** The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

**SECTION 8.11. EMPLOYMENT OPPORTUNITIES.** The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which they are a party, cause any new employment opportunities created in connection with the Project Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Project Facility is located (collectively, the "Referral Agencies"). Such job opportunities required to be listed with the Agency shall include internships. The Company also agrees, and shall cause any and all sublessees to agree, that they will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

**SECTION 8.12. CALCULATION OF ELIGIBLE EMPLOYEES.** (a) Annually, by January 30 of each year during the term of this Lease Agreement, commencing on January 30, 2017, the Company shall submit to the Agency an employment report relating to the period commencing January 1 of the previous year and ending December 31 of such year, except that the first employment report shall relate to the period commencing the Commencement Date and ending December 31, 2016,

substantially in the form of Exhibit C hereto, certified as to accuracy by the Authorized Representative of the Company.

(b) In connection with the delivery of Exhibit C hereto the Company shall calculate the number of Eligible Employees during an Annual Period. The number of Eligible Employees during an Annual Period (each such Eligible Employee, an "Annual Period Eligible Employee", and collectively, the "Annual Period Eligible Employees") shall be calculated by the Company on the basis of the aggregate sum of the numbers of Eligible Employees employed on the last payroll date for each of the months (including any partial month) during such Annual Period divided by twelve (except that in the first Annual Period, the divisor will be the number of months, including any partial month, contained in such Annual Period), based upon the employment report set forth in Section 8.12 (a) hereof.

**SECTION 8.13. EMPLOYMENT INFORMATION.** The Company agrees that, upon request of the Agency, the Company shall furnish to the Agency such information as the Agency shall reasonably request as necessary to verify or confirm the information reported in Schedule A. Upon request by the Agency, the Company shall submit to the Agency copies of each Form EEO-1 or the equivalent, with respect to the facilities of the Company and their Affiliates within the Town, as are required to be prepared and filed with Federal or State authorities pursuant to applicable law. In addition, the Company hereby authorizes any private or governmental entity, including but not limited to the New York State Department of Labor ( "DOL"), to release to the Agency and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees.

**SECTION 8.14. IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be property identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

**SECTION 8.15. MORTGAGES.** The Agency and the Company agree to grant a mortgage in the Project Facility to the extent financed with the proceeds of a loan to the lender of such loan (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the mortgage is in a standard form and substance pre-approved by the Agency and acceptable to the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form mortgage) and if the mortgage contains the following provisions:

Section \_\_. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under the loan or the mortgage. The lender will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this mortgage or the loan documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this mortgage or the loan documentation, the lender will look solely to the collateral covered by the security interest granted by this mortgage and/or the Company for the payment of the indebtedness secured by this

mortgage or the loan documentation and for the performance of the provisions hereof or thereof. The lender will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency (except the Company) and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this mortgage or the loan documentation. This agreement on the part of the lender shall not be construed in any way so as to effect or impair the lien of this mortgage or the lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town of Babylon, New York and neither the State of New York nor the Town of Babylon, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

No order or decree of specific performance with respect, to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the

Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section \_\_\_\_\_. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or under this mortgage or any of the loan documentation, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing or financing of the Project Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein or under any of the loan documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this mortgage, the obligations of the Company pursuant to this Section \_\_\_\_ shall remain in full force and effect after the satisfaction of this mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder

shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit act.

(d) Notwithstanding anything contained in this mortgage to the contrary, whenever the Company is obligated under this mortgage to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company's defense. The Company shall have the right to defend the Agency, its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(e) Notwithstanding the provisions of subsection (d) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this mortgage, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

Section \_\_\_\_\_. Recordation of Mortgage. The Agency covenants that it will record or cause this mortgage to be duly recorded in all offices where recordation thereof is necessary.

SECTION 8.16. LEASING OF EQUIPMENT. The Agency hereby agrees that the Company may lease any Equipment as agent for the Agency for a term not to exceed seven (7) years pursuant to the term of a lease and the Company may assign its rights under such lease to the Agency and the Agency shall sublease such Equipment to the Company pursuant to the terms of this Lease Agreement (in which event such lease shall be deemed a Permitted Encumbrance), if such lease is in a standard form and substance pre-approved by the Agency and acceptable (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form lease) to the Agency and the lease contains the following provisions:

Section \_\_\_\_\_. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this lease. The lessor will not look to the Agency or any principal, member, director, officer or employee of the Agency with

respect to the rent, or other obligations evidenced by this lease or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this lease, the lessor will look solely to the Equipment and/or the Company for the payment of the rent secured by this lease and for the performance of the provisions hereof. The lessor will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this lease or the documentation executed and delivered in connection with the lease. This agreement on the part of the lessor shall not be construed in any way so as to effect or impair the lien of this lease or the lessor's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lessor in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any rent or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this lease on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town of Babylon, New York and neither the State of New York nor the Town of Babylon, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

No order or decree of specific performance with respect, to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such



demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section \_\_. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Equipment or arising by reason of or in connection with the use thereof or under this lease, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing, subleasing and financing of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the lease (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this lease, the obligations of the Company pursuant to this Section \_\_ shall remain in full force and effect after the termination of this lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder

shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(d) Notwithstanding anything contained in this lease to the contrary, whenever the Company is obligated under this lease to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company's defense. The Company shall have the right to defend the Agency, its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(e) Notwithstanding the provisions of subsection (d) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this lease, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

**SECTION 8.17. RECAPTURE OF AGENCY BENEFITS.** It is understood and agreed by the parties to this Lease Agreement that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company and the Operator and to accomplish the Public Purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

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

(A) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first five (5) years after the date hereof;

(B) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the period from the sixty (6th) year through and including the eighth (8th) year after the date hereof;

(C) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the date hereof;

(D) forty per cent (40%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the date hereof; or

(E) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the period from the eleventh (11th) year through and including the fifteen (15th) year after the date hereof.

As used in this Section 8.17, the term “**Benefits**” shall mean, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Company and the Operator commencing from and after the Commencement Date, and during the period of time that the Agency maintains a leasehold interest in the Project Facility, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the Payment in Lieu of Tax Agreement from those payments which the Company and the Operator would have been required to pay during the term of this Lease Agreement (within the meaning of Section 5.2 hereof) had the Town determined the amount of such real estate taxes as would be due if the Agency had not had a leasehold interest in the Project Facility during such term; and

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

As used in this Section 8.17, the term “**Recapture Event**” shall mean any of the following events:

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

(2) The Company or the Operator shall have ceased all or substantially all of its operations at the Project Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;

(3) The Company or the Operator shall have transferred all or substantially all of their employees within the Town to a location outside of the Town through no force majeure event;

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

(5) The Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project Facility; or

(6) Base Employment Reduction Percentage shall be greater than fifteen percent (15%) due to a Relocation Reduction occurring with respect to an Annual Period.

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

(b) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Project Facility or any portion thereof made within fifteen (15) years of the Commencement Date, which notification shall set forth the terms of such Recapture Event and/or disposition.

(c) In the event any payment owing by the Company under this Section 8.17 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the then current interest rate imposed on delinquent payments of real property taxes until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section 8.17.

(e) The provisions of this Section 8.17 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

**SECTION 9.1. ASSIGNMENT OF THE LEASE AGREEMENT.** (A) Except as otherwise provided in Section 8.4, this Article IX or Article X hereof, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

(B) The Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Project Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so as to release such part of, or interest in, the Land and convey such title thereto, or interest therein, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Agency shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey (if the Lender so requests) of the Land to be conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement and that such part of, or interest in, the Land is not necessary, desirable or useful for the Project Facility.

(a) No conveyance of any part of, or interest in, the Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the Payment in Lieu of Tax Agreement.

**SECTION 9.2. REMOVAL OF EQUIPMENT.** (A) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of any Lender, if required by the Mortgage, if any, may remove such items from the Project Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, if any, provided that such removal will not materially impair the operation of the Project Facility for the purpose for which it is intended or change the nature of the Project Facility so that it does not constitute a "project" under the Act.

(B) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(C) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the Payment in Lieu of Tax Agreement.

### SECTION 9.3 ASSIGNMENT AND SUBLEASING.

(A) This Lease Agreement may not be assigned, in whole or in part, and the Project Facility may not be subleased, in whole or in part, except to the Operator and except where such assignment or subleasing is due to any sale, consolidation or merger of the Company permitted under Section 8.4 hereof and the resulting company reaffirms all agreements and obligations of the Company, without the prior written consent of the Agency in each instance, which consent may be fully and effectively given by the execution and delivery of a tenant agency compliance agreement by an Authorized Representative of the Agency. Any such assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder, unless agreed to by the Agency;
- (ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Lease Agreement or any Mortgage shall be adversely affected thereby;
- (v) the Project Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Project Facility to be used in violation of previous Section 862(2)(a) of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act; and
- (vi) the Company will execute and deliver a tenant agency compliance agreement, in form and substance satisfactory to the Agency.

Notwithstanding anything herein to the contrary, the Agency hereby consents to the Sublease Agreement (as defined in the Equipment Lease Agreement).

(B) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (A) of this Section 9.3, the Company at its cost shall furnish the Agency with opinions, in form and substance satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(C) In accordance with Section 862(1) of the Act, the Project Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the

proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Project Facility is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupation of the Project Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

**SECTION 9.4. MORTGAGE AND PLEDGE OF AGENCY'S INTERESTS TO LENDER .** The Agency shall at the request of and at the sole cost and expense of the Company (i) mortgage its interest in the Project Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights), to the Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

**SECTION 9.5. PLEDGE OF COMPANY'S INTEREST TO LENDER.** The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on a Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

**SECTION 9.6. MERGER OF THE AGENCY.** (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 10.1. EVENTS OF DEFAULT DEFINED.** (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(1) a default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection (B) of Section 5.3 hereof;

(2) a default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 (other than subsection (B)) or Section 6.7 hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company;

(3) a default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence;

(4) the occurrence of an "Event of Default" under any Basic Document not otherwise described in any other subdivision of this Section 10.1;

(5) the failure by the Company to pay or cause to be paid, on the dates due, the amounts specified to be paid pursuant to the Payment in Lieu of Tax Agreement, which is not cured within thirty (30) days after written notice;

(6) the invalidity, illegality or unenforceability of the Payment in Lieu of Tax Agreement, or the failure due to an action or inaction on the part of the Company to observe and perform any material covenant contained in the Payment in Lieu of Tax Agreement and such failure to observe and perform any material covenant shall continue for a period of ten (10) days after receipt by the Company of notice of default;

(7) the occurrence and continuation of a Recapture Event and such default shall continue for a period of ten (10) days after receipt by the Company and the Operator of notice of default including the sale or closure of the Project Facility and/or departure of the Company and/or the Operator from the Town of Babylon, New York, except as permitted under Articles VII and IX hereof;

(8) the Company shall generally not pay its debts as such debts become due or its inability to pay its debts as they become due;



(9) the Company shall conceal, remove or permit to be concealed or removed any of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof;

(10) (a) the filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days, (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment;

(11) the imposition of a Lien on the Project Facility other than a Permitted Encumbrance;

(12) the removal of the Project Facility, or any portion thereof, outside the Town of Babylon, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(C) hereof;

(13) the Base Employment Reduction Percentage shall be greater than thirty percent (30%) due to a Non-Relocation Reduction occurring in each of two consecutive Annual Periods; or

(14) at the sole and unlimited discretion of the Agency, the Base Employment Reduction Percentage shall be greater than fifteen percent (15%) due to a Relocation Reduction occurring in an Annual Period or continuing from a prior Annual Period.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party

giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3 and 6.3 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

**SECTION 10.2. REMEDIES ON DEFAULT.** (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease Agreement or any of the other Company Documents; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease Agreement, sell its interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, for such consideration as may be deemed appropriate in the circumstances, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the lessee pursuant to such lease and the rental payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management and operation of the Project Facility as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease Agreement and convey to the Company all the Agency's title and interest in and to the Project Facility pursuant to the provisions of Section 11.2 hereof; or

(4) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease Agreement and the other Company Documents.

**SECTION 10.3. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreement on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

**SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI

### OPTIONS AND OBLIGATION TO PURCHASE

SECTION 11.1. **EARLY TERMINATION OF THE LEASE AGREEMENT.** The Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1 and the payment of all amounts due pursuant to the terms of the Lease Agreement, the Payment in Lieu of Tax Agreement.

SECTION 11.2. **OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY.** Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and leasehold interest in and to the Project Facility for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Lease Agreement and the other Company Documents.

SECTION 11.3. **CONVEYANCE ON PURCHASE OF THE PROJECT FACILITY.** (A) At the closing of any purchase of the Agency's interest in the Project Facility pursuant to Section 11.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 hereof, as appropriate, deliver to the Company all necessary documents (1) to convey to the Company all the Agency's right, title and leasehold interest in and to the Property being purchased, as such property then exists, subject only to the following: (a) any Liens or title defects to which title to such Property was subject when conveyed to the Agency, (b) any Liens created by or at the request of the Company or to the creation of which the Company consented, (c) any Permitted Encumbrances, and (d) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default; and (2) release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Project Facility (but not including amounts relating to the Unassigned Rights). Upon the conveyance of the Project Facility by the Agency to the Company pursuant to this Article XI, the Payment in Lieu of Tax Agreement shall terminate.

(B) The sale and conveyance of the Agency's right, title and leasehold interest in and to the Project Facility shall be effected by the execution and delivery by the Agency to the Company of the Assignment to Company (an unexecuted copy of which is attached hereto as Exhibit D and by this reference made a part hereof). The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit E and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease Agreement (an unexecuted copy of which is attached hereto as Exhibit F and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfers of title. In the event of a termination of the Underlying Lease and the

Lease Agreement resulting from the exercise by the Agency of its remedies under Section 10.2 hereof, the Agency shall have the right to execute an appropriate Assignment to Company, Bill of Sale to Company and Termination of Lease Agreement (collectively, the "Termination Documents") with respect to the Project Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of the Termination Documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to execute such Termination Documents, together with all affidavits, questionnaires and other documentation necessary to accomplish the recording of such Termination Documents.

(C) The Company agrees to prepare the Assignment to Company and/or the Bill of Sale to Company and/or the Termination of Lease Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Company.

(D) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.3.

(E) This Lease Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.3 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.8 hereof.

(F) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.8 hereof, the Agency shall upon the request of the Company, execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

## ARTICLE XII

### MISCELLANEOUS

**SECTION 12.1. NOTICES.** All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally with a receipt obtained, or sent by first class or certified mail, postage prepaid, return receipt requested, or by a reputable overnight carrier, addressed as follows or to such other address as any party may specify in writing to the other:

**IF TO THE COMPANY:**

RJC Equities LLC  
1970 New Highway  
Farmingdale, New York 11735  
Attention: Orest P. Baransky

**WITH A COPY TO:**

Law Offices of Raymond J. Avera  
626 RXR Plaza, 6<sup>th</sup> Floor  
Uniondale, New York 11556  
Attention: Raymond J. Avera, Esq.

**IF TO THE AGENCY:**

Town of Babylon Industrial Development Agency  
47 West Main Street, Suite 3  
Babylon, New York 11702  
Attention: Chief Executive Officer

**WITH A COPY TO:**

John Braslow, Esq.  
816 Deer Park Avenue  
North Babylon, New York 11703

**AND TO:**

Barclay Damon, LLP  
80 State Street  
Albany, New York 12207  
Attention: M. Cornelia Cahill, Esq.

Notices shall be deemed given when received, refused or returned by the carrier as undeliverable and all notices may be given by the attorney for a party with the same force as if given by such party.

**SECTION 12.2. BINDING EFFECT.** This Lease Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease Agreement, their respective successors and assigns.

**SECTION 12.3. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

**SECTION 12.4. AMENDMENT.** This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 12.5. EXECUTION OF COUNTERPARTS.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 12.6. APPLICABLE LAW.** This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State without regard or reference to its conflict of laws principles.

**SECTION 12.7. LIST OF ADDITIONAL EQUIPMENT; FURTHER ASSURANCES.** Upon the Completion Date with respect to the Equipment and the installation of all of the Equipment in the Project Facility, the Company shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

**SECTION 12.8. RECORDING AND FILING.** The Underlying Lease (or a memorandum thereof), this Lease Agreement (or a memorandum hereof), the Mortgage and the Assignment shall be recorded by the Agency in the office of the County Clerk of Suffolk County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

**SECTION 12.9. SURVIVAL OF OBLIGATIONS.** (A) The obligations of the Company to make the payments required by Sections 5.3 and 6.7 hereof and to provide indemnities required by Sections 3.3 and 8.2 hereof shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

**SECTION 12.10. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.** The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

**SECTION 12.11. NO RECOURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Company Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency and no member, officer, agent (other than the Company) or employee of the Agency shall be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the Town of Babylon, New York, and neither the State of New York nor the Town of Babylon, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the

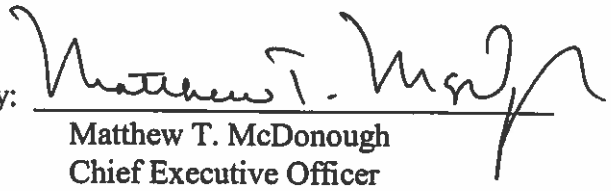


Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.


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IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY

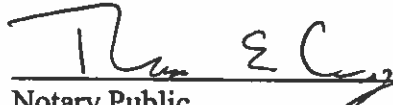
By:   
Matthew T. McDonough  
Chief Executive Officer

RJC EQUITIES LLC

By:   
Orest P. Baransky  
Authorized Representative

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

On the 29<sup>th</sup> day of February in the year 2016 before me, the undersigned, a notary public in and for the State of New York, personally appeared Matthew T. McDonough, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Thomas E. Curry  
Notary Public, State of New York  
No. 01CU5045465  
Qualified in Nassau County  
Commission Expires June 19, 2017

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

On the 29<sup>th</sup> day of February in the year 2016 before me, the undersigned, a notary public in and for the State of New York, personally appeared Orest P. Baransky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Thomas E. Curry  
Notary Public, State of New York  
No. 01CU5045465  
Qualified in Nassau County  
Commission Expires June 19, 2019

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

***Fidelity National Title Insurance Company***

**SCHEDULE A  
DESCRIPTION OF PREMISES**

**Title No. SP33618-S**

ALL that certain plot piece or parcel of land, situate, lying and being at Farmingdale, Town of Babylon, County of Suffolk and State of New York, situated on the northerly side of Central Avenue, more particularly bounded and described as follows:

BEGINNING at a point on the present northerly side of Central Avenue distant 220 feet, more or less, from the southerly end of a line connecting the present northerly side of Central Avenue and the present easterly side of New Highway and from said point or beginning;

RUNNING THENCE North 05 degrees 30 minutes 40 seconds East, a distance of 324.46 feet to a point;

THENCE South 85 degrees 14 minutes 40 seconds East, a distance of 238.17 feet to a point;

THENCE southerly, parallel with the first mentioned course, South 05 degrees 30 minutes 40 seconds West a distance of 327.61 feet to the northerly side of Central Avenue;

THENCE North 84 degrees 29 minutes 20 seconds West, a distance of 238.15 feet along the northerly side of Central Avenue to the point or place of BEGINNING.

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

**FOR CONVEYANCING ONLY:**

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

**DESCRIPTION**

## **EXHIBIT B**

### **DESCRIPTION OF THE EQUIPMENT**

All articles of personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the acquisition, reconstruction and installation of the Project Facility or placed on any part hereof, though not attached thereto, including, but not limited to, all equipment, machinery, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, drapes, blinds and accessories, moveable partitions, cleaning equipment, maintenance equipment, shelving, signs, waste containers, sprinkler systems and other fire prevention and extinguishing apparatus and materials; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor.

## EXHIBIT C

### FORM OF ANNUAL EMPLOYMENT REPORT

[TO BE COMPLETED ON LETTERHEAD OF COMPANY]

Annual Employment Report  
For the Year Ending \_\_\_\_\_, \_\_\_\_\_

In order to comply with Local and State employment reporting requirements, the Town of Babylon Industrial Development Agency must require all of its project companies to fill out and return the Report to the Agency no later than January 30, \_\_\_\_\_.

The undersigned DOES HEREBY CERTIFY THAT he/she is an Authorized Representative of RJC EQUITIES LLC (the "Company"), and has knowledge or access to that knowledge necessary to deliver this certificate, and this certificate is being delivered in accordance with the provisions of Section 8.12 of that certain Lease Agreement, dated as of February 1, 2016 (the "Lease Agreement"), by and between the Town of Babylon Industrial Development Agency and the Company, and does hereby further certify as follows with respect to the Annual Period which commenced [on the Commencement Date/January 1,] and ended [December 31, 20\_\_\_\_] (the "Reported Annual Period") (all capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

1. As of the end of the Reported Annual Period and at all times during the Reported Annual Period, the Company was not in default under any of the provisions which relate to the Company in the Lease Agreement. To the extent that the Authorized Representative of the Company shall have obtained knowledge or notice of any such default, the certificate shall disclose such default(s) or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under the Lease Agreement, and the action proposed to be taken by the Company with respect thereto.

2. The number of Annual Period Eligible Employees for the Reported Annual Period was \_\_\_\_\_, and the respective number of Eligible Employees employed during such Annual Period as constituted Full-time Employees and Full-time Equivalent Employees was \_\_\_\_\_ and \_\_\_\_\_, respectively.

3. There was (an increase) (a decrease) in the number of Annual Period Eligible Employees between the Reported Annual Period and the Annual Period immediately preceding the Reported Annual Period, and the amount of such (increase) (decrease) was \_\_\_\_\_%.

4. The number of Ineligible Employees for the Reported Annual Period was \_\_\_\_\_.

5. No Company Group Entity has transferred or established during the Reported Annual Period any operations, facilities and/or Eligible Employees outside of the Town, or, if it did, the following are the details thereof.

6. No Base Employment Reduction occurred in the Reported Annual Period, or, if it did, the following are the details thereof (including, without limitation, whether such Reduction was a Non-Relocation Reduction or a Relocation Reduction, and supporting information and evidence regarding the operations and employment of the Company Group Entity), and the calculation of any amount to be repaid or reduction in future Benefits.

7. I, the undersigned, hereby certify to the best of my knowledge and belief, that all



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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

RJC EQUITIES LLC

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

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

Title: \_\_\_\_\_

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

Tax ID #: \_\_\_\_\_

EXHIBIT D

FORM OF ASSIGNMENT TO COMPANY

THIS ASSIGNMENT TO COMPANY (the "Assignment to Company") dated as of \_\_\_\_\_, 20\_\_ by and between TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York, having an office for the transaction of business located at 47 West Main Street, Suite 3, Babylon, New York 11702 (the "Agency") and RJC EQUITIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1970 New Highway, Farmingdale, New York 11735 (the "Company").

In consideration of the sum of Ten Dollars (\$10.00), receipt and sufficiency of which is acknowledged, the Agency hereby sells, assigns and conveys to the Company all of the Agency's right, title and interest in and to a certain lease to agency dated as of February 1, 2016 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, whereby the Company granted to the Agency a leasehold interest in the parcel of the land more particularly described in Exhibit A attached thereto (the "Land") and in and to all those buildings, improvements, structures and other related facilities affixed or attached to the Land now or in the future.

The Company hereby agrees to indemnify the Agency as to any claims that have arisen heretofore or shall arise hereafter under the Underlying Lease and this Assignment to Company.

IN WITNESS WHEREOF, the Agency and the Company, for the purposes above set forth, have caused this Assignment to Company to be executed and delivered by their duly authorized officers, all as of the day and year first above written.

TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY

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

Name:

Title:

RJC EQUITIES LLC

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

Authorized Representative

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

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

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

STATE OF NEW YORK     )  
                                      ) SS.  
COUNTY OF                 )

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

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

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

EXHIBIT E

FORM OF BILL OF SALE TO COMPANY

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 47 West Main Street, Suite 3, Babylon, New York 11702 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from RJC EQUITIES LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 1970 New Highway, Farmingdale, New York 11735 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on the parcels of real estate located at 30 Central Avenue in the Town of Babylon, Suffolk County, New York (the "Land"), which Land is more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below and dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

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

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

EXHIBIT A  
DESCRIPTION OF THE LAND



## **EXHIBIT B**

### **DESCRIPTION OF THE EQUIPMENT**

All articles of personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the acquisition, reconstruction and installation of the Project Facility or placed on any part hereof, though not attached thereto, including, but not limited to, all equipment, machinery, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, drapes, blinds and accessories, moveable partitions, cleaning equipment, maintenance equipment, shelving, signs, waste containers, sprinkler systems and other fire prevention and extinguishing apparatus and materials; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT F

FORM OF TERMINATION OF LEASE AGREEMENT

WHEREAS, RJC EQUITIES LLC (the "Company"), as tenant, and TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), as landlord, entered into a lease agreement dated as of February 1, 2016 (the "Lease Agreement") pursuant to which, among other things, the Agency leased the Project (as defined in the Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) \_\_\_\_\_, 20\_\_ or (2) the date that the Lease Agreement shall terminate pursuant to Article X or Article XI of the Lease Agreement; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.8 of the Lease Agreement, certain obligations of the Company shall survive the termination of the Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 12.8 of the Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

RJC EQUITIES LLC

By: \_\_\_\_\_  
Authorized Representative

TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

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

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

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

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

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