

LEASE AGREEMENT

Dated August 29, 2013

by and between

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

SOVRAN ACQUISITION LIMITED PARTNERSHIP

Sovran Self Storage (Amityville) Project

Affecting the Land generally known by the street address
24 Sterling Place,
in the County of Suffolk,
Amityville, New York
as more particularly described in
Exhibit A to this Lease Agreement
and which is also known as
District 0101, Section 003.00, Block 05.00, Lot 004.002
on the Official Tax Map of Suffolk County

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into on or about August 29, 2013 (this "**Agreement**"), by and between **TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "**Agency**"), party of the first part, having its principal office at 47 West Main Street, Babylon, New York 11702, and **SOVRAN ACQUISITION LIMITED PARTNERSHIP**, a limited partnership existing under the laws of the State of Delaware (the "**Lessee**"), party of the second part, having its principal office at 6467 Main Street, Buffalo, New York 14221:

WITNESSETH:

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

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

WHEREAS, the Agency has entered into negotiations with the Lessee for the acquisition of a "project" within the meaning of the Act (the "**Project**") within the territorial boundaries of the Town of Babylon, New York and located on that certain lot, piece or parcel of land generally known as and located at 24 Sterling Place in Amityville, New York (the "**Land**") and otherwise described in Exhibit A attached hereto; and

WHEREAS, the Project will include the acquisition of an approximately 1.2 acre parcel of land and the renovation and equipping of the approximately 50,462 square foot self storage facility situated thereon for use by Lessee as a commercial self storage facility (the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the "**Facility**"); and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a "straight lease transaction" within the meaning of the Act in which the Agency will acquire or retain fee simple title to the Facility and the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on August 13, 2013 the Agency adopted a resolution (the "**Authorizing Resolution**") authorizing the undertaking of the Project, the acquisition of the Facility by the Agency and the lease of the Facility by the Agency to the Lessee; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee through a straight lease transaction has been determined to be necessary to induce the Lessee to proceed with the Project and thereby to increase jobs in Town of Babylon; and if the Agency does not provide such financial assistance, the Lessee has represented to the Agency herein that the Lessee could not feasibly proceed with the Project in the State of New York or maintain its competitive position in its industry; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Deed, dated the date hereof (the "**Deed**"), good and marketable fee simple title to the Land subject to Permitted Encumbrances, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Lessee the Agency's interest in the Facility; and

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

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

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

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

Abatement Termination Date shall have the same meaning as set forth in Section 4.3 hereof.

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

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

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

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

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

Annual Period shall mean (i) that period commencing on the Commencement Date and ending on December 31, 2013 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, 2026 and end on February 28, 2026.

Annual Period Eligible Employee shall have the meaning ascribed to such term in Section 6.13 hereof.

Applicable PILOT Payment shall have the meaning ascribed to such term in Section 4.3 (n) hereof.

Approved Facility shall mean a self storage facility for use by Lessee or any Affiliate in connection with the Lessee's business as a commercial self storage facility and the acquisition from time to time of machinery, equipment, furniture, fixtures and other tangible personal property.

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

Base Employment Number shall mean, for any Annual Period, one (1).

Base Employment Reduction shall mean, 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 shall mean the percentage derived by dividing the Base Employment Reduction by the Base Employment Number.

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

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

Commencement Date shall mean August 29, 2013, on which date this Agreement was executed and delivered.

Company Group Entity shall mean the Lessee and its Affiliates.

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

Eligible Employees shall mean 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.

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

Employee shall mean a Full-Time Employee or a Full-Time Equivalent Employee.

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

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

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

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

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

Full-Time Employee shall mean, 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 shall mean, 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).

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

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

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

Land shall mean that certain lot, piece or parcel of land generally known by the address 24 Sterling Place in Amityville, New York, all as more particularly described in Exhibit A - "Description of the Land" hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

Lessee shall mean **Sovran Acquisition Limited Partnership**, a limited partnership existing under the laws of the State of Delaware, and its permitted successors and assigns pursuant to Sections 6.1 or 9.3 hereof.

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

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

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

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

Non-Relocation Reduction shall mean any Base Employment Reduction in an Annual Period for any reason other than a Relocation Reduction.

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

Permitted Encumbrances shall mean:

- (i) this Agreement;

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

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', carriers', suppliers' or vendors' Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5 hereof;

(iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Facility Equipment or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof;

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

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

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

(viii) mortgages upon the Land and the Improvements thereon in existence on the Commencement Date.

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

PILOT Payments shall have the meaning ascribed to such term in Section 4.3 (d) hereof.

Prohibited Person shall mean:

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

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

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

(d) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).

Project shall mean the acquisition of the Land and the Improvements by the Agency and acquisition, renovation and equipping of an approximately 50,462 square foot facility thereto and the acquisition of the Facility Equipment thereon or therein, all for use by the Lessee as an Approved Facility.

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

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

Project Documents shall mean the Deed, this Agreement and the Sales Tax Letter.

Recapture Event shall have the meaning ascribed to such term in Section 8.5 hereof.

Relocation Reduction shall mean a Base Employment Reduction resulting from (i) any transfer or relocation 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, relocation or establishment of operations or facilities to a location outside of the Town.

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

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

Sales Tax Letter shall mean the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Lessee in accordance with this Agreement.

State shall mean the State of New York.

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

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

Town shall mean the Town of Babylon, New York.

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

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

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

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

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

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

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

(i) Except as permitted under the Act, the transactions contemplated by this Agreement shall not result in the removal of any facility or plant of the Lessee or any other occupant or user of the Facility from one area of the State (but outside of the Town) to within the Town or in the abandonment of one or more facilities or plants of the Lessee or any other occupant or user of the Facility located within the State (but outside of the Town);

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

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

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

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

(a) The Lessee is a limited partnership duly organized, validly existing and in good standing under the laws of the Delaware, is authorized to do business and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of limited partnership or agreement of limited partnership, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

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

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

(d) (Reserved).

(e) The Facility will constitute a "project" under the Act; and the Lessee intends to operate the Facility, or cause the Facility to be operated, in accordance with this Agreement and as an Approved Facility and a qualified "project" in accordance with and as defined under the Act.

(f) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Lessee to proceed with the Project and undertake the renovations and improvements to the Facility as described herein.

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

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

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

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

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

(l) The Lessee is in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

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

(n) Except as permitted by Section 9.3 hereof, no Person other than the Lessee or any Affiliate thereof is or will be in use, occupancy or possession of any portion of the Facility.

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

(p) The Lessee is not a Prohibited Person.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1 **The Deed.** The Lessee has caused to be delivered to the Agency for good and valuable consideration therefor, pursuant to the Deed, good and marketable fee simple title to the Land and the Improvements, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances. It is understood that (i) good and marketable fee

simple title to all Improvements and good and merchantable title to all Facility Equipment intended to be incorporated or installed in the Facility as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility or payment therefor, whichever shall occur first, and (ii) the Lessee shall take all action necessary to so vest title to such Improvements and Facility Equipment in the Agency and to protect such title against claims of any third parties.

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

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

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

Section 2.3 Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a fee title insurance policy in an amount not less than \$500,000 insuring the Agency's fee simple interest in the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances, and (b) a current survey of the Land certified to the Lessee, the title company issuing such title insurance policy and the Agency. Any proceeds of such fee title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be,

derived from any such title insurance policy insuring the Agency's fee title interest shall be applied to the payment of any Rental Payments due hereunder; and any balance thereafter may be used by the Lessee for any corporate purpose.

Section 2.4 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Eligible Materials and Facility Equipment effected by the Lessee and its agents, subagents, contractors and subcontractors (collectively, the "Lessee's Agents") as agents for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment, other than the Facility Equipment, or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Lessee shall be entitled to an amount of sales and use tax exemptions pursuant to the Sales Tax Letter and/or this Agreement until the earliest of (i) August 29, 2015, (ii) receipt by the Lessee of notice from the Agency of termination of the Sales Tax Letter, (iii) the termination of the Sales Tax Letter pursuant to the terms thereof or pursuant to Section 7.2(c) hereof or (iv) the termination of this Agreement.

(b) The Lessee covenants and agrees that it shall include and cause the Lessee's Agents to include a rider in the form of Schedule B-1 and B-2 in and as part of each contract, invoice, bill or purchase order entered into by the Lessee or the Lessee's Agents as agent for the Agency in connection with the Project.

If the Lessee, or the Lessee's Agents shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to Schedule B-1 and B-2, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Lessee and the Lessee's Agents shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, from the date of such taking.

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

(i) The Sales Tax Letter shall be dated the Commencement Date and shall be effective for a term commencing on its date and expiring upon the earliest of (1) August 29, 2015, (2) the completion of the Project, (3) the termination of this Agreement, or (4) the termination of the Sales Tax Letter pursuant to the terms thereof or pursuant to Section 7.2(c) hereof.

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

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

(A) shall not be available for payment of any costs other than the costs of Eligible Materials used in connection with the Project and Facility Equipment for incorporation into the Facility,

(B) shall only be utilized for Eligible Materials and Facility Equipment which shall be purchased, completed or installed for use only by the Lessee and permitted sublessees in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any Eligible Materials and Facility Equipment to a Person as shall not constitute the Lessee), it being the intention of the Agency and the Lessee that the sales and use tax exemption shall not be made available with respect to Eligible Materials used by the Lessee in connection with the Project or Facility Equipment unless such item is used solely by the Lessee and permitted sublessees at the Facility,

(C) shall not be available for any item of building materials which is not to be incorporated or used as part of the Project;

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(E) shall be available only if purchased by the Lessee or the Lessee's Agents as agent for the Agency for use by the Lessee in connection with the Project,

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

(G) shall only be available for those costs set forth in the Sales Tax Letter, and

(H) shall not be available subsequent to the termination of this Agreement.

(iv) In the event that the Lessee or the Lessee's Agents shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of paragraph (c)(iii) of this Section 2.4, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee, or the Lessee's Agents.

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

(vi) The Lessee shall use reasonable commercial efforts to obtain and cause the Lessee's Agents to obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Lessee or the Lessee's Agents to the