

LEASE AGREEMENT

Dated June 28, 2016

by and between

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

HSRE-EB WEST BABYLON, LLC

EB West Babylon Project

Affecting the Land
in the County of Suffolk and located at
520 Montauk Highway in West Babylon, New York
as more particularly described in
Exhibit A to this Company Lease Agreement
and which is also known as
District 0100, Section 223.00, Block 02.00, Lot 005.00
on the Official Tax Map of Suffolk County

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into on or about June 28, 2016, 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 Delaware, 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 **HSRE-EB WEST BABYLON, LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware and its permitted successors and assigns (the "Lessee"), party of the second part, having its principal office at c/o The Engel Burman Group, 67 Clinton Road, Garden City, New York 11530 (Capitalized terms used herein but not otherwise defined shall have the meaning set forth in Section 1.1 hereof.)

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, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee and Affiliates thereof for the acquisition of a "project" within the meaning of the Act within the territorial boundaries of the Town and located on that certain piece or parcel of land located at 520 Montauk Highway in West Babylon, New York in Suffolk County at Tax Map District 0100, Section 223.00, Block 02.00, Lot 005.000, and otherwise described in Exhibit A attached hereto; and

WHEREAS, the Project will include the acquisition of a sub-leasehold interest in the Land by the Agency and existing improvements thereon and the acquisition, construction and equipping of an assisted living facility containing approximately 150,000 square feet consisting of assisted living units and memory care units (the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories

incorporated therein), subject to the terms hereof, are collectively referred to herein as the "**Facility**"; and

WHEREAS, the Land and existing improvements thereon are owned by Cobra Management Inc. and have been leased to EB West Babylon, LLC a New York limited liability company ("**EB West Babylon**") pursuant to a Lease dated March 19, 2014, as amended by the First Amendment to Lease date June 28, 2016 (the "**Ground Lease**"); and

WHEREAS, simultaneously herewith, EB West Babylon will assign its interest in the Ground Lease to the Lessee pursuant to an assignment dated the date hereof (the "**Assignment**"); 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 pursuant to which (i) the Lessee will sublease the Land and existing improvements thereon to the Agency pursuant to a Company Lease dated the date hereof between the Lessee and the Agency (as the same may be amended or supplemented, the "**Company Lease**") and (ii) the Agency will further sub-sublease the Facility Realty and lease the Facility Personalty to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on September 2, 2015 as amended June 28, 2016, the Agency adopted a resolution (the "**Authorizing Resolution**") authorizing the undertaking of the Project, the sub-sublease of the Land and existing improvements thereon by the Agency from the Lessee and the further sublease of the Facility Realty and the Facility Personalty 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 and elder care housing in the Town of Babylon; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, a sub-leasehold interest in the Land and existing improvements thereon to the Agency pursuant to the Company Lease; and

WHEREAS, pursuant to this Agreement, the Agency will sublease the Facility Realty and lease the Facility Personalty to the Lessee; and

WHEREAS, pursuant to a Development Agreement dated the date hereof between the Lessee and EB West Babylon (the "**Development Agreement**") the Lessee and EB West Babylon will undertake the Project; and

WHEREAS, pursuant to a Master Lease dated the date hereof, the Lessee will further sublease the Facility to HSRE-EB VII TRS, LLC, a Delaware limited liability company, and pursuant to an Operating Lease dated the date hereof, HSRE-EB VII TRS, LLC will further sub-sublease the Facility to EB Care at West Babylon LLC a New York limited liability company.

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 Facility Realty, to the Agency; and

WHEREAS, Wells Fargo Bank, National Association (together with its successors and assigns, the "**Mortgagee**") has agreed to finance a portion of the Project costs pursuant to a Building Loan (the "**Building Loan**") made to the Lessee in the amount of Twenty-Two Million Eight Hundred Eighty-Seven Thousand Four Hundred and Fifty Four Dollars and Seventy-Nine Cents (\$22,887,454.79) pursuant to which the Lessee and the Agency have agreed to enter into a Building Loan Fee, Leasehold, Subleasehold and Sub-Subleasehold Mortgage, Absolute Assignment of Leases and Rents, Security

Agreement and Fixture Filing to be dated as of the date hereof (the "**Building Loan Mortgage**"), from the Lessee and the Agency to the Mortgagee, simultaneously with the execution and delivery of this Agreement; and

WHEREAS, in order to evidence its obligation to repay the Building Loan made by the Mortgagee, the Lessee simultaneously with the execution and delivery thereof, will execute and deliver to the Mortgagee a promissory note (the "**Building Loan Note**") in the principal amount of the Building Loan; and

WHEREAS, in order to secure its obligations to the Mortgagee under the Building Loan Note, the Lessee and the Agency will execute and deliver the Building Loan Mortgage on the Facility to the Mortgagee, subject to permitted encumbrances thereon; and

WHEREAS, the Mortgagee has agreed to finance a portion of the Project costs pursuant to a Project Loan (the "**Project Loan**" and together with the Building Loan, the "**Loan**") made to the Lessee in the amount of Six Million Nine Hundred Eighty-Eight Thousand Five Hundred Forty-Five Dollars and Twenty-One Cents (\$6,988,545.21) pursuant to which the Lessee and the Agency have agreed to enter into a Project Loan Fee, Leasehold, Subleasehold and Sub-Subleasehold Mortgage, Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing to be dated as of the date hereof (the "**Project Mortgage**" and together with the Building Loan Mortgage as the same may be amended or otherwise modified from time to time, the "**Mortgage**"), from the Lessee and the Agency to the Mortgagee, simultaneously with the execution and delivery of this Agreement; and

WHEREAS, in order to evidence its obligation to repay the Project Loan made by the Mortgagee, the Lessee simultaneously with the execution and delivery thereof, will execute and deliver to the Mortgagee a promissory note (the "**Project Loan Note**" and together with the Building Loan Note as the same may be amended or otherwise modified from time to time, the "**Note**") in the principal amount of the Project Loan; and

WHEREAS, in order to secure its obligations to the Mortgagee under the Project Loan Note, the Lessee and the Agency will execute and deliver the Project Loan Mortgage on the Facility to the Mortgagee, subject to permitted encumbrances thereon.

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. The parties hereto acknowledge that a Company Group Entity (as hereinafter defined) shall be deemed an Affiliate.

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.

Agent shall have the meaning set forth in Section 2.4(c).

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, 2017 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 the penultimate January 1 preceding the Abatement Termination Date (as defined in Section 4.3 hereof) and ending on the Abatement Termination Date.

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

Approved Facility shall mean an assisted living facility containing approximately 150,000 square feet consisting of assisted living units and memory care units and the acquisition, from time to time of machinery, equipment, furniture, fixtures and other tangible personal property therefor.

Assignment shall have the same meaning as set forth in the Recitals to this Agreement.

Assisted Living Units shall collectively mean the assisted living units and memory care units located at the Facility.

Base Employment Number shall mean, for any Annual Period, twenty-seven (27).

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.

Building Loan shall have the meaning ascribed to such term in the Recitals.

Building Loan Note shall have the meaning ascribed to such term in the Recitals.

Building Loan Mortgage shall have the meaning ascribed to such term in the Recitals.

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 June 28, 2016, on which date this Agreement was executed and delivered.

Company Group Entity shall mean the Lessee and its Affiliates, EB West Babylon, HSRE-EB VII TRS, LLC, the Operator and the Property Manager.

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

Development Agreement shall have the same meaning as set forth in the Recitals to this Agreement.

Eligible Employees shall mean an Employee of a Company Group Entity: (i) who is located and employed exclusively in the Town, (ii) who has 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 does not constitute an Ineligible Employee.

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Lessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies and exterior landscaping materials that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, decorative art that is not fine art, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above, purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be

replaced whenever the substance is consumed); and

- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

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 include, collectively, the Facility Realty and the Facility Personalty.

Facility Personalty shall mean those Eligible Items consisting of personal property described in Exhibit B "Description of Facility Personalty", together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions hereof, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 4.2.

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.

Form ST-123 shall mean NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes with respect to industrial development agency transactions.

Form ST-340 shall mean NYSDTF Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings with respect to industrial development agency transactions.

Form ST-60 shall mean NYSDTF Form ST-60 "IDA Appointment of Project Operator or Agent" or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

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 who 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).

General Municipal Law shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

Ground Lease shall have the meaning ascribed to such term in the Recitals.

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 Items shall mean the following items of personal property and services with respect to which the Lessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art;
- (v) interior potted plants;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

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 located at 520 Montauk Highway in West Babylon, New York in Suffolk County at Tax Map District 0100, Section 223.00, Block 02.00 and Lot 005.000, 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 HSRE-EB West Babylon, LLC, a limited liability company organized and 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.

Loan shall have the meaning ascribed to such term in the Recitals.

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

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under this Agreement, which shall equal \$1,471,520.75.

Mortgage shall have the meaning ascribed to such term in the Recitals.

Mortgagee shall have the same meaning ascribed to such term in the Recitals.

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.

NYSDTF shall mean the New York State Department of Taxation and Finance.

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

Operator shall mean EB Care at West Babylon LLC, a New York limited liability company.

Permitted Encumbrances shall mean:

(i) the Mortgage, the Ground Lease, this Agreement, the Company Lease and Permitted Leasing and Occupancy Agreements and any mortgages entered into pursuant to Section 9.17 hereof;

(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 Personalty or any contractor hired to perform Project work may place on or with respect to the Facility or any part thereof or any lien

security interest, encumbrance or charge to the extent some is contested in accordance with Section 6.5(b) hereof;

(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 existing on the date hereof which are acceptable to the Agency.

Permitted Leasing and Occupancy Agreements shall mean (a) the Ground Lease (b) the Master Lease between HSRE-EB West Babylon, LLC and HSRE-EB VII TRS, LLC, dated June 28, 2016; (c) the Operating Lease between HSRE-EB VII TRS, LLC and the Operator; (d) the Management Agreement between the Operator and the Property Manager; (e) all other leases to Permitted Tenants pursuant to Section 9.3(f) hereof; (f) all other management contracts and agreements with Affiliates and third-parties to provide services at the Facility in the ordinary course of the operation of the Facility as an Approved Facility; and (g) any licenses and concessionaire agreements with service providers at the Facility (including without limitation, cafeteria and/or other food providers, beauty salon, newsstand and/or gift shop) located at the Facility in the ordinary course of the operation of the Facility as an Approved Facility provided any such licensee or concessionaire shall not be a Prohibited Person and provided further that no such license or concession agreement shall provide any such concessionaire or licensee exclusive rights to any portion of the Facility in excess of 25% of the aggregate square footage of the Facility and provided further that at the request of the Agency, a copy of any such concession or license agreement shall be promptly provided to the Agency.

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

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

Prohibited Person shall mean:

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

(c) 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;

(d) 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

(e) 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 a sub-leasehold interest in the Land and existing improvements thereon by the Agency pursuant to the Company Lease, the acquisition, construction and equipping of an assisted living facility containing approximately 150,000 square feet including the Assisted Living Units and the acquisition of the Facility Personalty 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 Ground Lease, the Assignment, the Company Lease, this Agreement and the Development Agreement.

Project Loan shall have the same meaning ascribed to such term in the Recitals.

Project Loan Note shall have the same meaning ascribed to such term in the Recitals.

Project Loan Mortgage shall have the same meaning ascribed to such term in the Recitals.

Property Manager shall mean Ultimate Care Assisted Living Management LLC, a New York limited liability company.

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.

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 Authorized Signatory or any other party so designated by the Lessee upon reasonable notice to the Agency.

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Schedule B – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 2.4(e).

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Project.

Sales Tax Registry shall mean the Sales Tax Registry in the form set forth in Schedule C.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

Sales and Use Taxes shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

State shall mean the State of New York.

State Sales and Use Taxes shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

State Sales Tax Savings shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to this Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

Substantial Completion Date shall have the same meaning as set forth in Section 2.2(d) hereof.

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; and subject to the provisions hereof, will allow the Lessee to occupy the facility peaceably.

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) 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;

(ii) (Reserved); and

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

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

(a) The Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing and qualified to conduct business in the State of New York, is not in violation of any provision of its articles of organization or

operating agreement, 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 articles of organization of operating agreement 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) To its knowledge after reasonable inquiry, 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) 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.

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

(f) 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).

(g) To its knowledge, the Lessee is in compliance, and will continue to comply, and will cause the Facility to be compliant in all material respects, 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.

(h) 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.

(i) Except as permitted by Section 9.3 hereof and pursuant to any Permitted Leasing and Occupancy Agreements, no Person other than the Lessee or any Affiliate thereof or their customers or invitees is or will be in use, occupancy or possession of any portion of the Facility.

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

(k) The Lessee is not a Prohibited Person.

(l) The Note shall evidence the obligation of the Lessee to repay the loan made by the Mortgagee to the Lessee pursuant to the Mortgage for purposes of financing a portion of the cost of the Project in the amount of \$29,876,000.

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1 The Company Lease.

(a) Pursuant to the Company Lease, the Lessee has sub-leased to the Agency the Land, and all rights or interests therein or appertaining thereto, together with all 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.

(b) A valid sub-leasehold interest in all Improvements incorporated or installed in the Facility Realty as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Facility Realty or payment therefor, whichever shall occur first.

(c) The Lessee shall take all action necessary to so vest a valid sub-leasehold interest in such Improvements in the Agency and to protect such sub-leasehold interest and title claims against claims of any third parties.

Section 2.2 The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of undertaking the Project, including, without limitation, (i) acquiring and constructing the Improvements on the Land and acquiring the Facility Personalty 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 the Mortgage, (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 the 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 proceeds of the Loan and other sources available to the Lessee. In the event that moneys derived from such other sources are not sufficient to pay the costs necessary to complete the Project in full, the Lessee shall pay or cause to be paid that portion of such costs of the Project as may be in excess of the moneys derived from such sources 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 (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 promptly upon request thereof.

(d) The Lessee covenants that substantial completion of the Facility will occur no later than June 30, 2019 (the “**Substantial Completion Date**”).

(e) The date of substantial completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Lessee, attached hereto as Schedule E, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee, (i) that the Project has been substantially completed in accordance with the plans and specifications therefor and the date of substantial completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for other than retainages, (iii) that all other facilities necessary in connection with the Project have been substantially completed and all costs and expenses incurred in connection therewith have been paid, (iv) that the Agency has good and valid sub-leasehold interest to the Facility (which may be based on a leasehold title insurance policy continuation update) and good and merchantable title in the Facility Personalty and that all property constituting the Facility is subject to this Agreement, subject only to Permitted Encumbrances, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project.

(f) Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) that no Person other than the Agency may benefit therefrom. Such certificate of the Authorized Representative of the Lessee shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy and provide a copy of the same to the Agency), and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee that all costs of the Project have been paid in full (except for amounts not yet due and payable or contested pursuant to Section 6.5(b) hereof), together with waivers or releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project; (iii) evidence reasonably satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under Section 4.3 hereof, in respect of the Facility have been paid in full; (iv) a survey of the Land and Improvements prepared by a licensed surveyor at the Lessee's sole cost and expense, which survey shall (1) be certified to the Agency, the Lessee, and the title company referred to in Section 2.3 below, (2) locate the Improvements constructed as part of the Facility without any encroachment by any Improvements on premises adjoining the Land, (3) show the location of all Improvements constituting

part of the Facility within lot and building lines in compliance with the applicable zoning requirements, and (4) indicate all rights of way and rights of others of record with respect to the Facility; and (v) a final endorsement with respect to the title insurance policy theretofore delivered under Section 2.3 hereof, indicating that since the issuance of the title insurance policy there has been no change in the state of title and no survey exceptions not theretofore approved by the Agency, which endorsements shall contain no exception for inchoate mechanic's liens (with such affirmative insurance relating thereto as the Agency shall reasonably require and shall have the effect of redating such policy to the date of completion). Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

(g) The Lessee shall be permitted to enter into Permitted Leasing and Occupancy Agreements in connection with the operation of the Facility without the consent of the Agency.

Section 2.3 Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a leasehold title insurance policy in an amount not less than \$500,000 insuring the Agency's sub-leasehold interest under the Company Lease in each of 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 leasehold 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) **Agency's Exempt Status.** The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Lessee, any Agent or any third party that any Sales Tax Exemption is available under this Agreement.

(b) **Scope of Authorization of Sales Tax Exemption.** The Agency hereby authorizes the Lessee, subject to the terms and conditions of this Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Lessee and its Agents pursuant to this Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Commencement Date and expiring upon the earliest of (A) July 31, 2019, (B) the expiration or termination of this Agreement, and (C) the termination of the Sales Tax Exemption authorization pursuant to Section 7.2 (the "Termination Date").

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Lessee that the Lessee is in default beyond applicable notice and cure periods, under this Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Lessee at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item 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 any Eligible Item unless such item is used solely by the Lessee at the Facility Realty.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility Realty, other than the Lessee, without the prior written consent of the Agency.

(vii) By execution by the Lessee of this Agreement, the Lessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Lessee or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Lessee and each Agent shall cease being agents of the Agency, and the Lessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated and that the original executed Sales Tax Exemption Authorization Letter must be returned to the Lessee so that the Lessee can return the same to the Agency.

(ix) The Lessee agrees that the aggregate amount of Sales Tax Savings realized by the Lessee and by each Agent in connection with the Project shall not exceed in the aggregate the Maximum Sales Tax Savings Amount.

(c) **Procedures for Appointing Agents.** If the Lessee desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "Agent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Agreement, it must complete the following steps:

(i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Lessee must complete and submit Form ST-60 to the Agency with an original copy of the completed Sales Tax Agent Authorization Letter in the form attached hereto as Schedule B executed by the Agent. Please download Form ST-60 via the internet by typing http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf into the address bar of your internet browser and saving the "fill-in" PDF of the form (using Adobe Acrobat). The downloaded form may then be completed and returned to the Agency.

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Schedule B, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the

appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Lessee within five (5) Business Days following such execution. The Lessee shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Agreement to the Agent within five (5) Business Days after receipt thereof by the Lessee.

(iii) The Lessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Agreement, and upon the termination, expiration or cancellation of each Sales Tax Agent Authorization Letter, the Lessee shall retrieve and promptly surrender the same to the Agency.

(d) **Form ST-60 Not an Exemption Certificate.** The Lessee acknowledges that the executed Form ST-60 designating the Lessee or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Lessee nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) **Form ST-123 Requirement.** As an agent of the Agency, the Lessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Lessee or by any Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Lessee shall retain copies of all such contracts, agreements, invoices, bill and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form St-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(f) **Form ST-340 Filing Requirement.** The Lessee shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF, of the value of all Sales Tax Savings claimed by the Lessee and each Agent in connection with the Project. Should the Lessee fail to comply with the foregoing requirement, the Lessee and each Agent shall immediately cease to be agents of the Agency in connection with the Project without any further action of the Agency and the Lessee shall immediately and without demand notify each Agent appointed by the Agency in connection with the Project of such termination.

(g) **Sales Tax Registry Filing Requirement.** No later than February 1st of each year, the Lessee shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Schedule

C, which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the prior annual period ending on the preceding December 31st (or such shorter period beginning on the Commencement Date and ending on the preceding December 31st), unless the Termination Date occurred prior to such December 31st. Within ten (10) days after the Termination Date, the Lessee shall file with the Agency a completed Sales Tax Registry which accounts for all Sales Tax Savings realized by the Lessee and each Agent during the period from the preceding January 1st to the Termination Date.

(h) **Special Provisions Relating to State Sales Tax Savings.**

(i) The Lessee covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Lessee acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Lessee State Sales Tax Savings taken or purported to be taken by the Lessee, any Agent or any other person or entity acting on behalf of the Lessee to which Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee failed to comply with a material term or condition to use property or services in the manner required by this Agreement. The Lessee shall, and shall require each Agent and any other person or entity acting on behalf of the Lessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Lessee under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(iii) The Lessee is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Lessee or any other party) that the Agency is subject to certain requirements under General Municipal Law, including the following:

(1) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Lessee, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from any Agent, the Lessee or other person or entity.

(2) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner may require. The report shall be filed with the Commissioner, the

Director of the Division of the Budget of The State of New York, the New York State Comptroller, the Town of Babylon, and may be included with the Annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(iv) The foregoing requirements shall apply to any amounts of State Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Lessee or other person or entity acting on behalf of the Lessee characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

(i) Subject to the provisions of Section 2.4(h) hereof, in the event that the Lessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Agreement or any Sales Tax Agent Authorization Letter, the Lessee shall promptly deliver notice of same to the Agency, and the Lessee shall, upon demand by the Agency, pay to or at the direction of 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 compounded daily 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 any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Lessee, the Lessee shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Lessee and any Agent, and require all appropriate officers and employees of the Lessee to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Lessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Lessee under this Section 2.4.

(k) *Reporting of Sales Tax Benefits.*

(i) If and for so long as the same shall be required by law, the Lessee shall annually (currently, by each February 28 with respect to the prior calendar year) file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance (Form ST-340 or any successor or additional mandated form), of the value of all Sales Tax Savings claimed by the Lessee and all Agents in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), under the authority granted pursuant to this Agreement. The Lessee shall furnish a copy of such annual statement to the

Agency at the time of filing with the Department of Taxation and Finance. Should the Lessee fail to comply with the foregoing requirement, the Lessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, each of the Lessee and any Agent shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Eligible Items in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency any Sales Tax Agent Authorization Letter in the possession of any Agent. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from Sales and Use Taxes under the laws of the State. To the extent that the Lessee any Agent shall have received Sales Tax Savings, the Lessee agrees to include information with respect thereto in its Sales Tax Exemption Report required to be filed pursuant to subsection (k)(iii) below.

(ii) If there shall have been a subtenant, other than the Lessee or other than any residential subtenant in accordance with Section 9.3(f) hereof, with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the Lessee shall file with the Agency by the next following February 1, a certificate of an Authorized Representative of the Lessee with respect to all subtenancies in effect at the Facility, in the form prescribed by the Agency.

(iii) The Lessee shall submit to the Agency on February 1 of each year until completion of the Project, a completed Benefits Report in the form of Schedule D attached hereto to the extent that the Lessee or the Lessee's Agents shall have received Sales Tax Savings during the twelve-month period ending on the December 31 immediately preceding such February 1.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby leases to the Lessee the Facility Personalty and subleases the Facility Realty to the Lessee, and the Lessee hereby leases the Facility Personalty and subleases the Facility Realty from the Agency, for and during the term herein and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Agency of the Facility as the same is acquired, constructed, equipped and renovated shall take no further act or deed by the parties hereto).

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

(c) Subject to the Agency's rights to pursue remedies under Section 7.2, the Agency may not take, suffer or permit any action to prevent the Lessee during the Lease term from having quiet and peaceable possession of the Facility.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on the Abatement Termination Date as defined in Section 4.3(d) hereof, or such earlier date as this Agreement may be terminated as hereinafter provided.

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

(b) Additional Rent. Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts (including amounts payable under Section 4.3 hereof) required to be paid by the Lessee 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 Lessee 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.

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

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

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe operating order and condition, ordinary

wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure that the operations at the Facility shall not be materially impaired or diminished in any way. All replacements, renewals and repairs shall be substantially equal in quality, and utility to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

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

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

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

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

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

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, and the Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title to such property to the Agency and to subject such property to this Agreement, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at the Lessee's own cost and expense ("**Lessee's Property**") without claiming a Sales Tax Exemption therefore pursuant to the provisions of Section 2.4 hereof and without conveying title to such Lessee's Property to the Agency nor subjecting such Lessee's Property to this Agreement. The Lessee's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to the Lessee's Property without the consent of or notice to the Agency.

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

(e) The Lessee shall have the right to undertake the Project including the acquisition, construction and equipping of the Facility as described in Section 2.2 hereof.

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

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

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

Section 4.3 Payment in Lieu of Real Estate Taxes.

(a) *Description and Address of Project:*

The Project consists of the acquisition, construction and equipping of an assisted living facility aggregating approximately 150,000 square feet containing the Assisted Living Units. The Facility Realty is located at 520 Montauk Highway in West Babylon, New York in Suffolk County at Tax Map District 0100, Section 223.00, Block 02.00, Lot 005.00.

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

The PILOT Commencement Date shall be as defined in subsection (d) hereof. Until the PILOT Commencement Date, or such later date as the Facility Realty is determined to be exempt from real estate taxes, the Lessee shall pay to the Town or the Agency as the case may be all real estate taxes with respect to the Facility Realty at such times, in such manner and in such amounts as would be applicable if the Agency did not have a sub-leasehold interest in the Facility Realty under the Company Lease and calculated based upon the Stabilized Base Assessed Value of the Facility as defined in Section 4.3(d).

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

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

The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty in the event that the Town Collector of Taxes, the Assessors' Office of the Town, the Town Surveyor, or any other relevant official of the Town fails to recognize the Agency's exemption from real estate taxes on the basis of a discrepancy existing between the Facility Realty and the tax map of the Town of Babylon or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

For the period commencing on the PILOT Commencement Date (hereinafter defined) until the earlier of (i) the day immediately preceding the sixteenth anniversary of the PILOT Commencement Date (the "**Abatement Termination Date**") or (ii) the date on which the Agency no longer has a sub-leasehold interest in the Facility Realty, the Lessee shall make payment in lieu of real estate taxes and assessments (other than special ad valorem levies, special assessments and service charges against real property located in the Town which are or may be imposed for special improvements or special district improvements which the Lessee shall pay without exemption) (the "**PILOT Payments**"), in each Tax Year (defined below) in accordance with the following formula:

Definitions

PILOT Commencement Date = the "**PILOT Commencement Date**" shall be the March 1 (or any other date designated as the taxable status date of the Town pursuant to the Suffolk County Tax Act) immediately succeeding the issuance by the Town of a final or temporary Certificate of Occupancy for the Facility.

A = The "**Full Assessed Value**" of the Facility Realty as determined by the Town Tax Assessor immediately after the issuance by the Town of a final or temporary Certificate of Occupancy for the Facility and any modification of the assessed value as thereafter determined by the Town Tax Assessor.

B = the "**Base PILOT**" which equals the Stabilized Base Assessed Value multiplied by the then current tax rate of the Town for such Tax Year.

C = The current tax rate of the Town then in effect for such Tax Year.

S = The "**Stabilized Base Assessed Value**" which equals \$30,000, which is the assessed value of the Facility Realty as of December 1, 2015.

Tax Year = Each Tax Year of the Town currently commences December 1 and ends November 30. The first Tax Year below shall commence with December 1 immediately succeeding the PILOT Commencement Date and end on November 30 thereafter and each succeeding Tax Year shall commence on each December 1 and end on each November 30 thereafter until this agreement has terminated or expired.

Tax Year

1 through 5, inclusive	B				
6	B	+	$((A-S) \times C)$	x	5%
7	B	+	$((A-S) \times C)$	x	10%
8	B	+	$((A-S) \times C)$	x	15%
9	B	+	$((A-S) \times C)$	x	20%
10	B	+	$((A-S) \times C)$	x	25%
11	B	+	$((A-S) \times C)$	x	30%
12	B	+	$((A-S) \times C)$	x	35%
13	B	+	$((A-S) \times C)$	x	40%
14	B	+	$((A-S) \times C)$	x	45%
15	B	+	$((A-S) \times C)$	x	50%
16 and thereafter	Full taxes due on the assessed value of the Facility Realty in accordance with the then current tax rate of the Town and then current assessed value of the Facility Realty.				

The tax benefits provided for in this subsection (d) shall be deemed to commence on the PILOT Commencement Date. In no event shall the Lessee be entitled to receive real property tax benefits due to the Project under this agreement for a period longer than the period set forth in the formula immediately above. Notwithstanding the foregoing schedule, the Lessee further covenants and agrees that for any period that the Agency continues to hold leasehold or sub-leasehold title to the Facility after the Abatement Termination Date, the Lessee shall pay 100% of the full tax due or the assessed value of the Facility Realty together with any special assessment and services charges relating to the Facility whichever may be imposed for special district improvements in accordance with the provisions of this Section 4.3.

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

(f) The Agency may file a lien on the Facility in order to secure amounts due the Agency hereunder or, at its election, may at any time require that the Lessee grant such lien to the Agency as a condition to any lease of the Facility to the Lessee pursuant to the terms hereof. This Agreement may be filed in the real property records of the County of Suffolk pertaining to the Project at the expense of the Lessee.

(g) As long as provisions of this Section 4.3 are in effect, the Agency and the Lessee agree that (i) the Lessee shall be deemed to be the owner of the Facility Realty for the purpose of instituting

judicial review of any assessment of the real estate with respect to the Facility Realty pursuant to the provisions of Article 5 and 7 of the Real Property Tax Law or any other applicable law as the same may be amended from time to time; and (ii) the Lessee shall have full authority to file grievances and protests, protesting any present or future assessment on the Facility Realty; and (iii) the Lessee shall accept as valid any and all final assessments placed on the Facility Realty by the Assessor of the Town of Babylon after the final determination of any grievance, protest, or judicial review contemplated under subparagraph (ii) above. The Agency as sub-leasehold owner of the Facility Realty will reasonably cooperate with the Lessee in the filing of any grievance or protest of any present or future assessment permitted hereunder. The Agency shall provide or cause to be provided to the Lessee, in the same manner and at the same time as if the Lessee were a taxpayer (or within fifteen calendar days thereof), notice of any proposed change in assessment of the Facility Realty. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility Realty, including any additions thereto, is reduced as a result of any such grievance, protest or judicial review so that the Lessee would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Jurisdictions as if the Agency had not had a sub-leasehold interest in the Facility Realty in accordance with the Company Lease, the Lessee shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this Agreement. In such event, the Lessee's sole relief and remedy shall be the receipt of a credit against prospective payments in lieu of taxes to be paid to the Agency pursuant to this Agreement measured from the date the credit is granted in the amount, within the below described limits, equal to the refund or refunds of taxes paid to the respective Taxing Jurisdictions prior to the date of this Agreement that the Lessee would be entitled to receive if the Agency had not had a sub-leasehold interest in the Facility Realty and any additions thereto. Provided however, that (i) such credit shall be available and payable only to the Lessee only during the Lessee's occupancy of the Facility Realty under this Lease Agreement and (ii) the amount of such credit shall not exceed aggregate payments in lieu of taxes to be paid under this Lease Agreement measured from the date of the settlement of such grievance or protest or the date the judgment respecting such credit is entered. In no event shall the Lessee have any claim against funds of the Agency with respect to credits provided for in this paragraph (g).

(h) Subject to the provision of paragraph (g) hereof, the Lessee shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment with respect to the Facility Realty by any of the Taxing Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein, provided, however, that the Lessee agrees that any action taken by the Lessee or an Affiliate thereof to reduce the assessed value of the Facility Realty below the Stabilized Base Assessed Value shall constitute a default hereunder and give rise to the remedies provided in Section 7.2 hereof.

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

To the extent permitted by law, any payments previously made shall be credited against any taxes then due and payable and nothing herein contained shall prohibit the Lessee from contesting the validity or constitutionality of any such amendment, legislative change or judicial decision.

(j) If the Lessee enters into any written agreement with any Taxing Jurisdiction providing for payments in lieu of taxes by the Lessee to any or all of them, so much of this Section 4.3 as it relates to the Taxing Jurisdiction with which the Lessee has entered into said written agreement shall be

automatically modified to reflect the terms of any such written agreement, and any such written agreement shall be deemed to be incorporated into this Section 4.3 by reference and made a part hereof as an amendment or modification hereof. Should the Lessee receive any real property tax exemption from any of the Taxing Jurisdictions, this Section 4.3 shall automatically be modified to reflect the extent of such exemption.

(k) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project, the Lessee shall make any additions to the Facility Realty, the aggregate value of which shall equal or exceed \$250,000 (the “**Additional Improvements**”), the Lessee shall deliver written notice to an Authorized Representative of the Agency of same within thirty (30) days after the completion thereof. The Agency shall thereupon request that the Improvements constituting a part of the Facility Realty (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the Town and the Lessee shall make additional payments in lieu of taxes equal to:

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

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

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

The Lessee understands and agrees that the Lessee is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a sub-leasehold interest in the Land and Improvements constituting the Facility Realty for that portion of the Facility Realty, if any, utilized or occupied by any Person, other than the Lessee, any Affiliate thereof or any Person entering into a Permitted Leasing and Occupancy Agreement. The Lessee hereby represents to the Agency that no portion of the Facility Realty is utilized or occupied or is intended to be utilized or occupied by Persons other than the Lessee, any Affiliate thereof or any Person as permitted to occupy or utilize the Facility pursuant to a Permitted Leasing and Occupancy Agreement. The Lessee agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Facility Realty utilized or occupied by any Person other than the Lessee, Affiliates thereof or any Person as permitted to occupy or utilize the Facility pursuant to a Permitted Leasing and Occupancy Agreement. The Lessee understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Lessee as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Lessee would have been required to pay as if the Agency did not have a leasehold interest in the Facility Realty for that portion of the Facility Realty utilized or occupied by Persons other than the Lessee, Affiliates thereof or any Person as permitted to occupy or utilize the Facility pursuant to a Permitted Leasing and Occupancy Agreement for so long as such utilization or occupation shall continue.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Agreement or upon the occurrence of an Event of Default, beyond applicable notice and cure periods, under this Agreement and while such default is continuing, the Lessee shall be required to make payments in lieu of real estate taxes on the Land and Improvements constituting a part of the Facility Realty in such amounts as would result from taxes levied on the Facility Realty if the Agency did not have a sub-leasehold interest in the Facility Realty. For purposes of the determination of such payments in lieu of

real estate taxes, the tax rate shall be the rate then in effect as shown on the records of the proper Town department.

(m) *Survival of Obligations:*

The obligations of the Lessee under this Section 4.3 shall survive the termination or expiration of this Agreement for any reason whatsoever. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 4.3, for good cause shown.

(n) *Additional Covenants:*

(i) The Lessee covenants and agrees that in the event of any Non-Relocation Reduction occurring during the term of this Lease Agreement that there shall not be two consecutive Annual Periods where the Base Employment Reduction Percentage is greater than thirty percent (30%) for each such Annual Period;

(ii) In the event there shall have been a Base Employment Reduction Percentage greater than thirty percent (30%) (the "Applicable Base Employment Reduction Percentage"), due to a Non-Relocation Reduction occurring in any Annual Period, PILOT Payments due under Section 4.3 (d) hereof for the Tax Year immediately following such Annual Period shall equal the amount set forth in the schedule contained in Section 4.3 (d) for the appropriate Tax Year (the "**Applicable PILOT Payment**") plus an amount equal to the product of (A) the Applicable PILOT Payment, and (B) the Applicable Base Employment Reduction Percentage.

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to Section 4.3 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Lessee in the Facility, or the Rental Payments or other amounts payable hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "**Impositions.**" The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Facility is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 4.3 hereof) solely due to the Agency's sub-leasehold or controlling interest in the Facility Realty, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Agency had not had a sub-leasehold or controlling interest in the Facility Realty.

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

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

(ii) (A) Upon completion of the Facility property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by the property damage insurance), Builders' All Risk insurance, whether by endorsement or otherwise, written on 100% builders' risk completed value, non-reporting form including coverage therein for completion and/or premises occupancy, all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee and the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency) not less often than once every year, at the expense of the Lessee; any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks;

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

(iv) (Reserved).

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance with limits in accordance with applicable law, which the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any contractor or subcontractor performing work with respect to the Project. The Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their respective employees required by law; and; and

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

(b) All insurance required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "A-/X" or better by AM. Best & Co., or (ii) approved by the

Agency. The Agency may change such rating requirements if reasonably required by substantial changes in insurance industry premiums, risks or coverage provided that such change does not impose a substantial hardship of financial burden on the Lessee in comparison to the ratings of carriers typically providing average for similar business and buildings in the Town. Each of the policies or binders evidencing the insurance required above to be obtained shall designate (except in the case of workers' compensation, Builder All Risks, and property damage insurance) the Lessee and the Agency as additional insureds as their respective interests may appear, and, with respect to Builders All Risks Insurance designate the Agency as its interest may appear. Said insurance may be carried in a combination of primary and umbrella insurance.

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

(i) designate the Lessee as the named insured (except in the case of workers' compensation insurance) designate under the Comprehensive General Liability Policy, the Agency and each mortgagee, if applicable, as additional insureds and with respect to Property Insurance designate each Mortgagee (or its successor) as loss payees as its interests appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the Facility be endorsed and made payable as provided in the Mortgage, or to the Lessee if the Mortgage has been satisfied and discharged;

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

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

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

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

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

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Facility owned or operated by them or their Affiliates.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be paid as provided in the Mortgage, and if such Mortgage shall no longer encumber the Facility, then to the Lessee as so insured and applied in accordance with Section 5.1 of this Agreement.

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Lessee, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency a broker's certificate of coverage, certificate of liability insurance, evidence of property insurance and certificates or other evidence of other required insurance, and as soon as possible thereafter, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 4.5. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired.

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

Section 4.6 Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after providing the Lessee with 15 days advance written notice in accordance with Section 9.5 hereof of the Agency's intention to cure such failure (except that no prior notification of the Lessee shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement or any other Project Document to which the Agency is a party, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply in all material respects, with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous

wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the “**Legal Requirements**”), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, provided, however, if such contest could result in the Agency being in any reasonable danger of civil liability (including accrual of interest, fines and/or penalties), (y) the Lessee shall deliver a written confirmation to the Agency that the Lessee shall indemnify and hold the Agency harmless for any such claims, liabilities, costs or expenses as may derive with respect thereto and (z) the Lessee shall deliver to the Agency such security as the Agency may reasonably require.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

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

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or, to the extent practicable after giving effect to any condemnation or takings, to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental

Payments payable by the Lessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

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

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee under this Section 5.1(b).

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

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

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

- (iii) (Reserved), and

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

- (d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or, to the extent practicable after giving effect to any condemnation or taking to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and valid leasehold title to all property constituting part of the Facility and all property of the Facility is subject to the Company Lease and this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee against third parties or each other which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy or equivalent (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Lessee will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exists no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) The Agency and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event.

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

(g) Subject to the rights of any mortgagee, the Lessee shall be entitled to any casualty insurance proceeds or condemnation award, compensation or damages attributable to the Facility.

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

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its corporate property, business or assets remaining after the Commencement Date, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; **provided, however,** the Lessee, without violating the foregoing but with the prior written consent of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State and (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, (2) the Lessee delivers to the Agency an Opinion of Counsel to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, (3) such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer.

Section 6.2 Indemnity. (a) The Lessee shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons acting on the Agency's behalf in its official capacity under the Agency's control or supervision (collectively, the "**Indemnified Parties**") and each an "**Indemnified Party**") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing

of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents and the Mortgage, (ii) the acquisition, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, (v) the execution and delivery by the Indemnified Party, the Lessee of, or performance by the Indemnified Party or the Lessee, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby or (vi) any amendment made to the Act subsequent to the date hereof with limits, regulates or restricts the provision of financial assistance (as defined in the Act) to facilities that are primarily used in making retail sales to customers who personally visit such facilities. The Lessee shall not be liable with respect to the foregoing indemnity relating to losses directly arising from the gross negligence or willful misconduct of an Indemnified Party. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee or its directors, officers, partners, employees, agents or servants or persons under the control or supervision of the Lessee or any other Person who may be about the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (vi) of Section 6.2(a) hereof or at the direction of the Lessee with respect to any of such matters above referred to provided that, the foregoing indemnity shall not apply to any losses directly arising from the gross negligence or willful misconduct of an Indemnified Party. Any Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action. However, the failure to give such notice in sufficient time shall not constitute a defense hereunder or in any way impair the obligations of the Lessee under this Section 6.2, if (x) the Lessee or its agents, officers or employees shall have had knowledge or notice of such claim or action or (y) the Indemnified Party shall not have had knowledge or notice of such claim or action, or (z) the Lessee's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (i) the Indemnified Party shall not have timely notified the Lessee of any such claim or action, (ii) the Lessee shall not have had knowledge or notice of such claim or action, and (iii) the Lessee's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the Indemnified Party, then the Lessee's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

(c) In addition to and without limitation of all other representations, warranties and covenants made by the Lessee under this Agreement, the Lessee further represents, warrants and covenants that the Lessee has not to the Lessee's knowledge after commercially reasonable inquiry used Hazardous Materials (as defined hereinafter) on, from, or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the Lessee's knowledge based on the information included in: (i) that certain Phase I Environmental Site Assessment, prepared by FPM Group, dated April 2014 (File No. 977-14-36) and (ii) that certain Phase I Environmental Site Assessment Update, prepared by FPM Group, dated May 2016 (File No. 977-16-60), the true and complete copy of which the Lessee has delivered to the Agency

(collectively, the “**Audit**”), no prior owner of the Facility Realty or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Facility in any manner which violates Federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials except to the extent that the utilization and storage of such Hazardous Materials is in compliance with applicable federal, state and local laws. The Lessee shall, to the extent required by applicable law, keep or cause the Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Lessee shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or any tenant or subtenant, a release of Hazardous Materials onto the Facility or onto any other property. The Lessee shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; **provided, however**, that if any such tenant or subtenant shall be an Affiliate of the Lessee, the obligation of the Lessee with respect to such Persons shall be absolute and not limited to best efforts. The Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Facility (x) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (y) to the reasonable satisfaction of the Agency and (z) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (ii) defend, indemnify, and hold harmless each Indemnified Party from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, (other than claims, demands, penalties, fines, liabilities, settlements, damage, costs, or expenses directly relating to the gross negligence or willful misconduct of an Indemnified Party) known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Facility; (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, “Hazardous Materials” includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

The parties hereto agree that the reference in this Section 6.2(c) to the Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Lessee’s obligations to carry out and perform all of the covenants stated in Section 4.7 hereof and throughout this Section 6.2, including but not limited to, those covenants wherein the Lessee is obligated to indemnify each Indemnified Party and comply with all laws, ordinances, rules and regulations pertaining to Hazardous Materials.

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

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

(f) For the purposes of this Section 6.2, the Lessee shall not be deemed employees, agents or servants of the Agency or a person under the Agency's control or supervision.

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

Section 6.4 Retention of Title to Facility; Grant of Easements; Release of Facility Realty. (a) Neither the Lessee nor the Agency shall sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its respective title to or leasehold interest in the Facility or any part thereof during the term of this Agreement, other than the granting of the Mortgage or in accordance with Section 9.3 hereof or the disposition and replacement of obsolete property, without the prior written consent of the Lessee and the Agency and any purported disposition without such consent shall be void. Notwithstanding the foregoing, the Agency shall have the power to assign, otherwise dispose of or terminate its leasehold interest in the Facility as provided in Section 7.2(a) hereof without the consent of the Lessee.

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

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

Section 6.5 Discharge of Liens. (a) If any lien, encumbrance or charge, other than Permitted Encumbrances is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "**Liens**"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement or the interest of the Agency or the Lessee or under this Agreement, other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility.

(b) Notwithstanding the provisions of Subsection (a) hereof, the Lessee may at its sole expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or in this Agreement, of the Agency or the Lessee or against any of the Rental Payments payable under this Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

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

Section 6.7 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE LESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE

LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND ANY AND ALL SUBLESSEES, IS SATISFIED THAT THE FACILITY SHALL BE SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND ANY SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

Section 6.8 (Reserved)

Section 6.9 Employment Information, Opportunities and Guidelines. (a) The Lessee shall ensure that all employees and applicants for employment by the Lessee or his Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider, and cause each of its Affiliates at the Facility to first consider, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities. Such consideration, however, shall not bind or obligate Lessee or any Affiliate to hire any person through the Federal Job Training Partnership Act programs.

(b) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.10 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

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

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

Section 6.13 Calculation of Eligible Employees. (a) Annually, by January 30 of each year during the term of this Agreement, the Lessee 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 on the PILOT Commencement Date defined in Section 4.3 hereof and ending December 31, immediately succeeding such PILOT Commencement Date, substantially in the form of Schedule A hereto, certified as to accuracy by the Authorized Representative of the Lessee.

(b) In connection with the delivery of Schedule A hereto the Lessee 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 Lessee 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 6.13(a) hereof.

Section 6.14 Construction Employment. The Lessee shall submit to the Agency throughout the course of the construction of the Project on a monthly basis on the seventh business day of each month, construction employment reports detailing the number of construction employees employed by contractors and subcontractors with respect to the Project. Such reports shall relate to the calendar month immediately preceding the delivery of such report and shall provide sufficient detail as to the number of construction employees employed with respect to each job classification (i.e., plumbers, carpenters, laborers etc.) for the Project. The Lessee shall require that throughout the course of the construction of the Project that, at the written request of the Agency, the prime contractor and any sub-contractors shall submit to the Agency, certified payroll reports documenting all construction worker hours performed on the Project as well as the total of all construction workers employed with respect to the Project.

Section 6.15 Employment Information. The Lessee agrees that, upon request of the Agency, the Lessee shall furnish to the Agency such information as the Agency shall reasonably request as necessary to determine and verify or confirm the number of individuals employed with respect to the construction and/or operation of the Facility. Upon request by the Agency, the Lessee shall submit to the Agency copies of each Form EEO-1 or the equivalent, with respect to individuals employed with respect to the construction and/or operation of the Facility as are required to be prepared and filed with Federal or State authorities pursuant to applicable law. In addition, the Lessee hereby authorize 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 individuals employed with respect to the construction and or operation of the Facility.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

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

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

(b) (i) Failure of the Lessee to observe and perform any covenant, condition or agreement on its part to be performed under Sections 2.2 (d), 4.3, 4.4, 4.6, 6.1, 6.2, 6.3, 6.9, 6.12, 6.13, 6.15, 7.6, 8.5, 9.3 or 9.14 hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

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

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

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

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Lessee shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof, or of Section 2.6 of the Guaranty Agreement;

(f) Any representation or warranty made (i) by the Lessee in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by the Lessee herein or by the Lessee in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;

(g) The commencement of proceedings to foreclose the lien of any mortgage or lien on the Facility Realty which remains undismissed within 30-days of the commencement thereof;

(h) Any loss of the leasehold estate by the Agency in the Facility Realty;

(i) (i) (Reserved)

(j) The Lessee shall become a Prohibited Person.

(k) 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

(l) 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.

The Agency hereby covenants and agrees that the Agency shall deliver to the Mortgagee written notice of any default by the Lessee hereunder simultaneously with sending such notice to the Lessee and that no notice of default given to the Lessee, and no exercise of any remedy by the Agency as a result of any such default, shall be effective unless such notice shall have been delivered to the Mortgagee. The Agency hereby further covenants and agrees that the Mortgagee shall have the right, but not the obligation, to cure any default by the Lessee hereunder and the Mortgagee shall be afforded (a) an additional cure period of 30 days in addition to any cure period granted to the Lessee hereunder or (b) in the event that any such default cannot, with reasonable diligence, be cured within 30 days, such longer period as may be required to complete such cure provided that the Mortgagee notifies the Agency of its intention to cure such default and the Mortgagee promptly commences and diligently pursues such cure to completion.

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

(a) The Agency may terminate this Agreement and the Company Lease (with the effect that the term of this Agreement and the Company Lease shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement and the original expiration date of the Company Lease) in which case this Agreement and the Company Lease and all of the estate, right, title and interest herein and therein granted or vested in the Lessee shall cease and terminate (except for the provision hereof or thereof which shall survive termination), and upon any such termination, the Agency shall convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing and recording, at the sole cost and expense of the Lessee, lease termination agreements to terminate the Company Lease and this Agreement of record as required by law and a bill of sale for the conveyance of the Facility Personalty to the Lessee (to the extent of any interest, if any, of the Agency in the Facility Personalty). The Lessee hereby waives delivery and acceptance of such termination and bill of sale as a condition to its validity, and 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 file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination. Any conveyance of Facility Personalty to the Lessee shall be subject to any existing liens filed or recorded against the Facility;

(b) The Agency may bring an action for actual damages of the Agency, injunction or specific performance;

(c) The Agency may thereafter suspend or terminate the provisions of Section 2.4 hereof or any Sales Tax Agent Authorization Letter;

(d) The Agency may require the Lessee to make payments in lieu of real estate taxes under Section 4.3 hereof with respect to the Facility Realty in an amount equal to that amount which the Lessee would otherwise be required to pay if the Agency had not had a leasehold or controlling interest in the Facility Realty; or

(e) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the Rental Payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee from the Lessee's obligations hereunder, including without limitation, the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility, and by reason thereof, the Lessee shall again pay taxes with respect to the Facility Realty), 6.2, 6.3, 8.5, 9.13 and 9.15 hereof, all of which shall survive any such action.

Upon termination of this Agreement or Lessee's right of possession of the Facility pursuant to this Section 7.2, the Company Lease shall automatically terminate.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy in strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

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

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

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

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1 Option to Terminate the Company Lease and this Agreement. (a) Subject to compliance with Section 8.5 hereof, the Lessee shall have the option to terminate the Company Lease and this Agreement on any date during the term hereof by paying all Rental Payments due and payable hereunder to the date such purchase option is exercised. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to the Chief Executive Officer or other Authorized Representative of the Agency stating that the Lessee has elected to exercise its option under this Section 8.1(a) and the date on which such termination is intended to be made.

(b) The Lessee, in terminating the Company Lease and this Agreement pursuant to Section 8.1(a) hereof, shall pay to the Agency, in legal tender, an amount equal to all Rental Payments then due and payable hereunder to the date such termination is exercised, plus one dollar (\$1.00).

Section 8.2 (Reserved).

Section 8.3 Conveyance Upon Expiration of Term. Upon the expiration of the term hereof, the Lessee shall exercise its option to terminate the Company Lease and this Agreement as provided in Section 8.1 hereof.

Section 8.4 Actions Upon Termination .

- (a) On the termination date provided for pursuant to Section 8.1, the Lessee shall:
- (i) pay any and all Rental Payments then due, plus one dollar (\$1.00),
 - (ii) surrender any Sales Tax Agent Authorization Letters to the Agency for cancellation, if applicable, and
 - (iii) deliver or cause to be delivered to the Agency with respect to the Mortgage on the Facility to which the Agency shall be a party and intended to continue beyond the termination of this Agreement, a release of the Agency from such the Mortgage in recordable form executed by all other parties to such the Mortgage.
- (b) On the date of the termination of the Agency's interest in the Facility pursuant to Section 8.1, the Agency will, upon Lessee's performance of its obligations pursuant to Section 8.4(a), deliver or cause to be delivered to the Lessee (subject to the lien of the Mortgage):
- (i) termination agreements and all other necessary documents confirming the release of the Agency's right, title and interest in and to the Facility Realty and terminating the Company Lease and this Agreement,
 - (ii) a bill of sale with respect to the Facility Personalty (to the extent of any interest, if any, of the Agency in the Facility Personalty), and
 - (iii) all necessary documents releasing all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.5), or any insurance proceeds (other than liability insurance proceeds for the

benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

(c) Upon termination of the Company Lease and this Agreement, the Agency, upon the written request and at the sole cost and expense of the Lessee, shall execute such instruments as the Lessee may reasonably request or as may be necessary to discharge this Agreement and the Company Lease as documents of record with respect to the Facility Realty, subject to Section 8.4(d) hereof (subject to the lien of the Mortgage).

(d) Upon conveyance of the Agency's interest in the Facility, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 4.3 (until such time as the Agency shall cease to have a leasehold estate in the Facility, and by reason thereof, the Lessee shall again pay full real estate taxes with respect to the Facility Realty), 6.2, 8.5, 9.13 and 9.15 hereof shall survive such termination.

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

(a) (i) If there shall occur a Recapture Event after the date hereof, the Lessee 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 ten (10) years after the Commencement Date;

(B) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Commencement Date;

(C) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the twelfth (12th) year after the Commencement Date;

(D) forty per cent (40%) of the Benefits if the Recapture Event occurs during the thirteenth (13th) year after the Commencement Date; or

(E) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the fourteenth (14th) year after the Commencement Date.

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

(1) all real estate tax benefits which have accrued to the benefit of the Lessee commencing from and after the "Commencement Date", and during the period of time that the Agency is the sub-leasehold owner of the Facility, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 4.3 hereof from those payments which the Lessee would have been required to pay during the term of this Agreement (within the meaning of Section 3.2 hereof) had the Town determined the amount of such real estate taxes as would be due if the Agency had no sub-leasehold interest the Facility Realty during such term; and

(2) all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to,

any exemption from any applicable state or local sales and use tax, mortgage recording tax and filing and recording fees accruing from and after the date hereof.

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

The Lessee shall have failed to operate the Facility or failed to cause the Facility to be operated as an Approved Facility, and such failure is not cured within ninety (90) days after notice from the Agency;

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

The Lessee shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event other than temporary cessation due to repairs, remodeling, alterations and improvements;

The Lessee shall have transferred all or substantially all of its employees within the Town to a location outside of the Town through no force majeure event;

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

The Lessee or shall have sold, transferred or otherwise disposed of all or substantially all of its interest in the Facility; or

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 Facility, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

(b) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof made within twenty (20) 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 Lessee under this Section 8.5 shall not be paid on demand by the Lessee, 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 Lessee 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 Lessee under this Section 8.5.

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

(f) In addition to the foregoing, the Lessee agrees to make recapture payments to the Agency in the amount equal to State Sales Tax Savings taken or purported to be taken by the Lessee, any Agent or other person or entity acting on behalf of the Lessee to which the Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount.

ARTICLE IX

MISCELLANEOUS

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

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

Section 9.2 Priority. Pursuant to the Mortgage, the Agency and the Lessee will grant to the Mortgagee a mortgage lien on and a security interest in the Facility as security for the payment of amounts due under the applicable loan. This Agreement shall be subject and subordinate to the terms and provisions of the Mortgage, and to such mortgage lien and security interest so created thereby. Notwithstanding the foregoing, as between the Agency and the Lessee, the Agency shall have the ability to enforce the remedies in Section 7.2 hereof against the Lessee. No Mortgagee shall have any liability or obligation with respect to the Recapture of Benefits under Article VIII hereof.

Section 9.3 Assignment or Sublease. (a) The Lessee shall not at any time (i) except as permitted by Section 6.1 hereof, assign or transfer this Agreement nor (ii) except pursuant to a Permitted Leasing and Occupancy Agreement sublet in whole or any substantial portion of the Facility, without the prior written consent of the Agency.

(i) Notwithstanding the foregoing, the Lessee may sublease the Facility in whole or in any substantial portion to an Affiliate of the Lessee, provided that with respect to each such sublease under this Section 9.3(a):

(ii) the Lessee shall deliver to the Agency an Opinion of Counsel reasonably acceptable to the Agency to the effect that the sublease shall not cause the Facility to cease being an Approved Facility and a "project" under the Act;

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

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

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

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

(vii) with respect to any subletting in part, the term of each such sublease does not exceed five (5) years and at any given date, no more than an aggregate of twenty percent (20%) of the Facility Realty would be subleased by the Lessee;

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

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

(x) each such sublease contains such other provisions as the Agency may reasonably require.

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

(b) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant by the Lessee.

(c) If all or any substantial portion of the Facility is sublet pursuant to the provisions of Section 9.3(a), the Agency, in the event of the Lessee's default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the sublessee during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

(d) The Lessee covenants and agrees that it shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of any sublease entered into in accordance with this Section 9.3(b).

(e) The limitations in this Section 9.3 on assignment or transfer of this Agreement and subletting in whole or any substantial part of the Facility shall have equal application to any assignment or transfer or subletting in whole or any substantial part of the Facility.

(f) Notwithstanding anything contained in this Section 9.3 to the contrary, the Lessee shall be authorized without the prior consent of the Agency, written or otherwise in the ordinary operation of the Facility as an assisted living facility, to enter into residential leases with residential tenants with respect to the Facility (no one lease of which constitutes all or substantially all of the Facility).

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

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

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

(z) if to The Engel Burman Group, 67 Clinton Road, Garden City, New York 11530, Attention: Steven Krieger with a copy to Frank Davis, Esq. at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, The Omni, 333 Earle Ovington Blvd., Uniondale, New York 11553.

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

The Agency shall deliver to the Mortgagee a copy of any notice of default or notice of its intent to convey title to the Facility to the Lessee that the Agency delivers to the Lessee. Such copies shall be

delivered at the same time and in the same manner as such notice is required to be given to the Lessee, addressed as follows:

If to the Mortgagee, to

Mortgagee:

Wells Fargo Bank, National Association
1750 H Street, N.W. , Suite 550
Washington, D.C. 20006
Attention: Melissa Hilton
Loan No. 1016084

With a copy to:

Wells Fargo Bank, National Association
2030 Main Street, Suite 800
Irvine, California 92614
Attention: Kim Taylor
Loan No. 1016084

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

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

Section 9.8 Inspection of Facility. The Lessee will permit the Agency, or its duly authorized agent, at all reasonable times, to enter the Facility but solely for the purpose of (y) assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as an Approved Facility and a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

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

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

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

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

Section 9.13 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of

this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or repossession shall survive the termination or expiration of this Agreement.

Section 9.14 Non-Discrimination. At all times during the maintenance and operation of the Facility, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

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

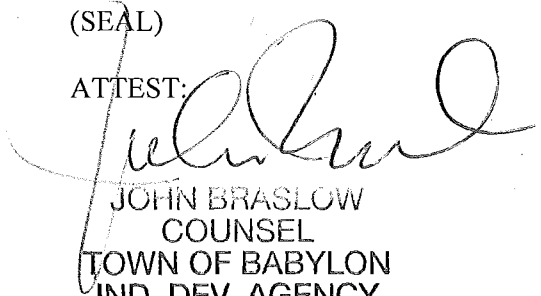
Section 9.16 Depreciation . It is the intention of the parties that as between the Agency and the Lessee that the Lessee shall be entitled to all depreciation deductions with respect to the Facility Personalty under Section 167 or 168 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Lessee Facility and any comparable state and local income tax benefits (whether now existing or hereafter enacted or adopted); and without limiting the generality of the foregoing, any low income housing credit or comparable credit which may ever be available shall accrue to the benefit of Lessee and Lessee shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code and the Treasury Regulations applicable thereunder, as may be necessary to entitle Lessee to have such benefit. The Agency makes no representation or warranty whatsoever, however, that any such tax benefits would be available to either the Agency or Lessee.

Section 9.17 Reference to Mortgage. References herein to "Mortgagee" shall include any future lender providing mortgage loans to the Lessee (which if the Agency is a party to the mortgage securing such mortgage loan, such future lender shall be reasonably acceptable to the Agency) the proceeds of which are used to finance or refinance the Project. References herein to "Loan" shall include any such mortgage loans provided by a Mortgagee to the Lessee the proceeds of which are used to finance or refinance the Project. References herein to "Mortgage" shall include any mortgage or security agreement granted by the Agency and/or the Lessee to a Mortgagee which grants a mortgage lien on or security interest in the Facility in favor of the Mortgagee as security for such Mortgagee's Loan to the Lessee, in connection with the financing or refinancing of the Project. This Lease Agreement will be subject and subordinate to any such Mortgage.

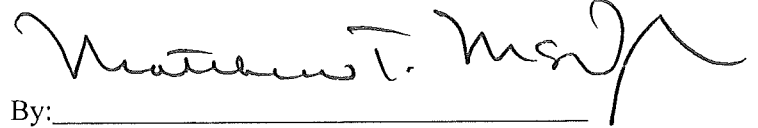
IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chief Executive Officer and attested under the seal of the Agency by its Secretary, or an Assistant Secretary or Counsel, and the Lessee has duly executed this Agreement all being done as of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

(SEAL)

ATTEST:


JOHN BRASLOW
COUNSEL
TOWN OF BABYLON
IND. DEV. AGENCY

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**



By: _____
Name: Matthew McDonough
Title: Chief Executive Officer

HSRE-EB WEST BABYLON, LLC

By: _____
Name: Steven Krieger
Title: Authorized Signatory

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

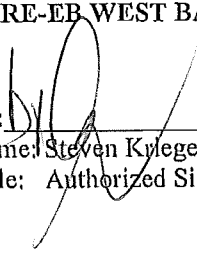
(SEAL)

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

ATTEST:

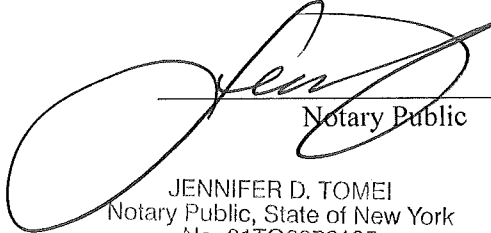
By: _____
Name: Matthew McDonough
Title: Chief Executive Officer

HSRE-EB WEST BABYLON, LLC

By:  _____
Name: Steven Kyleger
Title: Authorized Signatory

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

On the 24 day of June, in the year two thousand and sixteen, the undersigned, personally appeared Matthew 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

JENNIFER D. TOMEI
Notary Public, State of New York
No. 01TO6076195
Qualified in Suffolk County
Commission Expires June 24, 2018

UNIFORM ACKNOWLEDGMENT

STATE OF NEW YORK)

COUNTY OF Nassau)

ss.:

On the 24th day of June, in the year two thousand sixteen, before me, the undersigned personally appeared Steven Krieger 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.



BRANDON L. SOLOMON
Notary Public, State of New York
No. 01906229735
Qualified in Suffolk County
Notary Public Commission Expires 10/18/2018

Exhibit A

DESCRIPTION OF THE LAND

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF BABYLON, COUNTY OF SUFFOLK AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF MONTAUK HIGHWAY (WEST MAIN STREET)(N.Y.S. ROUTE 27A) WITH THE EASTERLY SIDE OF FLEETS POINT DRIVE;

RUNNING THENCE NORTH 64° 23' 40" EAST, 358.00 FEET ALONG THE SOUTHERLY SIDE OF MONTAUK HIGHWAY TO LAND NOW OR FORMERLY OF MCCUP ESTATES;

THENCE ALONG SAID LANDS, SOUTH 14° 48' 00" EAST (ACTUAL)(SOUTH 14° 24' 30" EAST DEED), 499.19 FEET TO LAND SHOWN ON THE MAP OF FLEETS POINT COLONY, SECTION 2;

THENCE ALONG SAID LANDS SOUTH 64° 23' 40" WEST, 362.10 FEET TO THE EASTERLY SIDE FLEETS POINT DRIVE;

THENCE ALONG THE EASTERLY SIDE OF FLEETS POINT DRIVE, NORTH 14° 20' 20" WEST (ACTUAL)(NORTH 19° 56' 50" WEST DEED), 500.00 FEET TO THE SOUTHERLY SIDE OF MONTAUK HIGHWAY, AT THE POINT OR PLACE OF BEGINNING.

Property Address: 520 Montauk Highway, West Babylon, New York 11704

Section: 223.00

Block: 02.00

Lot: 005.00

Exhibit B

DESCRIPTION OF THE FACILITY PERSONALTY

Facility Personalty shall mean that machinery, equipment and other tangible personal property acquired and installed in accordance with the sales tax benefits conferred hereunder as part of the Project pursuant to Section 2.4 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). "Facility Personalty" shall not include (I) any item of personalty which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (ii) plants, shrubs, trees, flowers, lawns or plants, or (iii) fine art, objects d' art or other similar decorative items.

Exhibit C

PROJECT COST BUDGET

Land Acquisition Costs	\$	0
Construction Costs		25,596,000
Soft Costs		5,451,000
FF&E		<u>1,659,000</u>
Total		\$32,706,000

SCHEDULE A

[TO BE COMPLETED ON LETTERHEAD OF LESSEE]

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 **HSRE-EB WEST BABYLON, 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 6.13 of that certain Lease Agreement, dated as of December __, 2015 (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, _____] (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 this Lease.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____.

HSRE-EB WEST BABYLON, LLC, a New York limited liability company

By:

By:

By: _____

Name:

Title:

Telephone # _____

Tax ID # _____

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: JUNE 30, 2019

ELIGIBLE LOCATION:

520 Montauk Highway in West Babylon, New York

_____, 201__

TO WHOM IT MAY CONCERN

Re: Town of Babylon Industrial Development Agency
(West Babylon Project)

Ladies and Gentlemen:

The Town of Babylon Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Agency and Lease Agreement, dated as of June 28, 2016 (the "Agreement"), between the Agency and **HSRE-EB West Babylon, LLC** (the "Lessee"), the Agency has authorized the Lessee to act as its agent for the in connection with the Project described therein including the Facility Realty located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Agreement.

2. Upon the Lessee's request, the Agency has appointed **[insert name of Agent]** (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Exhibit A hereto with respect to the scope of Sales Tax Exemption provided under the Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Lessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. **THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN**

ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Lessee, as Project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Lessee to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Lessee in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Lessee (no later than January 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding twelve-month period (ending on December 31st, as applicable) in connection with the Project and the Facility by completing and submitting to the Lessee the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. Special Provisions Relating to State Sales Tax Savings.

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the

event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Agreement and the Special Provisions, the Special Provisions shall control.

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Lessee is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Lessee, any Agent or any other person or entity acting on behalf of the Lessee or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Agreement. The Lessee shall, and shall require each Agent and any other person or entity acting on behalf of the Lessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Lessee under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(c) The Agent is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Lessee or any other party) that the Agency is subject to certain requirements under General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Agent, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from the Agent, the Lessee or other person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Comptroller, the Town of Babylon, and may be included with the Annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(d) The foregoing requirements shall apply to any amounts of State Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Lessee or other person or entity acting on behalf of the Lessee characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any

such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Lessee and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of 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 compounded daily 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 Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

(a) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the Town, unless such default or breach has been waived in writing by the Agency or the Town, as the case may be;

(b) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(c) has been convicted of a felony in the past ten (10) years;

(d) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(e) has received written notice of default in the payment to the Town of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

“Town” shall mean Town of Babylon.

13. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

14. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the “Termination Date”) that is the earlier of (i) the Expiration Date referred to above, (ii) the expiration or termination of the Agreement, (iii) receipt by the Lessee of notice from the Agency of termination of the Sales Tax Exemption, and (iv) the termination of the Sales Tax Exemption authorization pursuant to Section 7.2 of the Agreement (the “Termination Date”). Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Matthew McDonough
Title: Chief Executive Officer

ACCEPTED AND AGREED TO BY:

_____ **[AGENT]** _____

By: _____
Name:
Title:

Exhibit A

To

SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility Realty;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above, purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

Ineligible Items shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art;
- (v) interior potted plants;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.

Exhibit B

To

SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM [JANUARY 1] 201__ to
[DECEMBER 31], 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
---	---------------------	------------------	-----------------------	--------------------	-------------------------------------	-------------------------

**TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED
PERIOD:**

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Town of Babylon Industrial Development Agency ("TOBIDA") and may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

SCHEDULE C**Sales Tax Registry**

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JANUARY 1, 201__ to
DECEMBER 31, 201__

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
ANNUAL PERIOD FROM JANUARY 1, [] to DECEMBER 31, []						

**TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL PERIOD FROM
JANUARY 1, [] to DECEMBER 31, []:**

**TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED
PERIOD:**

Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Lessee, by Town of Babylon Industrial Development Agency. This form and information provided pursuant hereto may be disclosed or may be included in reports or disclosure required by law.

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

SCHEDULE D

BENEFITS REPORT

For benefits utilized during the period of __/__/__ - __/__/__

SALES TAX BENEFIT

Total Purchase Costs: \$ _____
Total Sales Tax Benefits: \$ _____

EQUIPMENT PURCHASES

ELIGIBLE MATERIALS PURCHASES

Principal/Owner/Chief Financial Officer: _____

(Please print)

Signature: _____ Date: _____

Please submit the completed form to: Town of Babylon Industrial Development Agency

*47 West Main Street
Babylon, New York 11702
Attention: Chief Executive Officer*

SCHEDULE E

**PROJECT COMPLETION CERTIFICATE OF LESSEE AS
REQUIRED BY SECTION 2.2(e) OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of **HSRE-EB WEST BABYLON, LLC**, a New York limited liability company (the "Lessee"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 2.2(e) of that certain Lease Agreement, dated as of June 28, 2016 (the "Lease Agreement"), between the Town of Babylon Industrial Development Agency (the "Agency") and the Lessee, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project was _____; except for any Project costs not due and payable or the liability for payment of which is being contested or disputed by the Lessee in good faith, all labor, services, machinery, equipment, materials and supplies used therefor have been paid for or arrangement for payment, as described below, has been made [insert details of payment arrangement if possible];

all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid;

the Agency has good and valid sub-leasehold interest in the Facility, and all property constituting the Facility is subject to such Lease Agreement, subject only to Permitted Encumbrances;

in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes;

\$_____ represents the amount required for the payment of remaining Project costs;

this Certificate is given with prejudice to any rights of the Lessee against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate; and

attached hereto are (a) releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project, (b) a permanent certificate of occupancy and (c) any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Lease Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this ____ day of ____, 201__.

HSRE-EB WEST BABYLON, LLC

By: _____

By: _____

By: _____

Name:

Title:

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND REPRESENTATIONS	3
Section 1.1 Definitions.....	3
Section 1.2 Construction	12
Section 1.3 Representations and Warranties by Agency.....	12
Section 1.4 Findings by Agency	12
Section 1.5 Representations and Warranties by the Lessee	12
ARTICLE II CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE.....	14
Section 2.1 The Company Lease.....	14
Section 2.2 The Project	14
Section 2.3 Title Insurance.....	16
Section 2.4 Limitation on Sales Tax Exemption.....	16
ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS	21
Section 3.1 Lease of the Facility	21
Section 3.2 Duration of Term.....	22
Section 3.3 Rental Provisions	22
Section 3.4 Rental Payments Payable Absolutely Net.....	22
Section 3.5 Nature of Lessee's Obligation Unconditional.....	22
ARTICLE IV MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE	22
Section 4.1 Maintenance, Alterations and Improvements.....	22
Section 4.2 Removal of Property of the Facility	24
Section 4.3 Payment in Lieu of Real Estate Taxes	24
Section 4.4 Taxes, Assessments and Charges	29
Section 4.5 Insurance	29
Section 4.6 Advances by Agency.....	32
Section 4.7 Compliance with Law	32
ARTICLE V DAMAGE, DESTRUCTION AND CONDEMNATION	33
Section 5.1 Damage, Destruction and Condemnation.....	33
ARTICLE VI PARTICULAR COVENANTS.....	35
Section 6.1 Dissolution of Lessee; Restrictions on Lessee	35
Section 6.2 Indemnity	35
Section 6.3 Compensation and Expenses of the Agency	38

Section 6.4	Retention of Title to Facility; Grant of Easements; Release of Facility Realty	38
Section 6.5	Discharge of Liens	39
Section 6.6	Agency's Authority; Covenant of Quiet Enjoyment.....	39
Section 6.7	No Warranty of Condition or Suitability.....	39
Section 6.8	(Reserved)	40
Section 6.9	Employment Information, Opportunities and Guidelines	40
Section 6.10	Further Assurances.....	40
Section 6.11	Recording and Filing.....	40
Section 6.12	Further Encumbrances	40
Section 6.13	Calculation of Eligible Employees.....	41
Section 6.14	Construction Employment	41
Section 6.15	Employment Information	41
ARTICLE VII EVENTS OF DEFAULT; REMEDIES		41
Section 7.1	Events of Default.....	41
Section 7.2	Remedies on Default	43
Section 7.3	Remedies Cumulative	44
Section 7.4	No Additional Waiver Implied by One Waiver	44
Section 7.5	Effect on Discontinuance of Proceedings	44
Section 7.6	Agreement to Pay Attorneys' Fees and Expenses.....	44
ARTICLE VIII OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS		45
Section 8.1	Option to Terminate the Company Lease and this Agreement	45
Section 8.2	(Reserved)	45
Section 8.3	Conveyance Upon Expiration of Term	45
Section 8.4	Actions Upon Termination.....	45
Section 8.5	Recapture of Agency Benefits	46
ARTICLE IX MISCELLANEOUS.....		48
Section 9.1	Force Majeure	48
Section 9.2	Priority	48
Section 9.3	Assignment or Sublease	48
Section 9.4	Amendments	50
Section 9.5	Notices	50
Section 9.6	Prior Agreements Superseded	51
Section 9.7	Severability	51

Section 9.8	Inspection of Facility.....	51
Section 9.9	Effective Date; Counterparts.....	51
Section 9.10	Binding Effect	51
Section 9.11	Third Party Beneficiaries	51
Section 9.12	Law Governing.....	51
Section 9.13	Waiver of Trial by Jury	51
Section 9.14	Non-Discrimination.....	52
Section 9.15	Recourse under This Agreement.....	52
Section 9.16	Depreciation	52
Section 9.17	Reference to Mortgage.....	52