

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

WR COMMUNITIES – L, LLC

LEASE AND PROJECT AGREEMENT

Dated as of June 29, 2023

WR Communities – L Project

300 Long Island Avenue
Wyandanch, New York 11798
as more particularly described in Exhibit A hereto
District 0100, Section 057.00, Block 01.00, Lot 045.002
on the Official Tax Map of Suffolk County

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THIS LEASE AND PROJECT AGREEMENT (this “**Lease Agreement**”), dated as of the date set forth on the cover page hereto (the “**Closing Date**”), is between the **TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its office at 47 West Main Street, Babylon, New York 11702 (the “**Agency**”), as sublessor, and **WR COMMUNITIES – L, LLC**, a New York limited liability company, having its principal office at c/o Albanese Development Corporation, 1001 Franklin Avenue, Suite 300, Garden City, New York 11530 (the “**Company**”), as sublessee.

RECITALS

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**”) has been heretofore enacted by the Legislature of the State of New York for the purposes, among others, of providing for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York (the “**State**”), 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, the Enabling Act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvements thereon, and all other such real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which is suitable for manufacturing, warehousing, research, commercial, recreational, residential or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, as amended, and Chapter 177 of the Laws of 1973 of the State, as amended (collectively, the “**Act**”), the Agency was created for the benefit of the Town of Babylon and the inhabitants thereof; and

WHEREAS, the Town of Babylon (the “**Town**”) has undertaken multiple actions regarding the redevelopment of downtown Wyandanch, including the designation of an urban renewal area in downtown Wyandanch, the adoption of a blighted study, which was prepared by AKRF, Inc., and is entitled “Blighted Study for the Wyandanch Area” dated May, 2007, and the adoption of a Nomination under the State of New York’s Brownfield Opportunity Area Program due to severe blighted conditions within downtown Wyandanch. The Town, by Resolution of the Town Board No. 424 dated June 25, 2008 (i) adopted the Blighted Study, (ii) designated an urban renewal area (the “**Downtown Wyandanch Urban Renewal Area**”) in downtown Wyandanch as appropriate for urban renewal and (iii) authorized the Town Department of Planning and Economic Development and/or its agents to prepare or cause to be prepared an urban renewal plan. The Town, by Resolution of the Town Board dated May 22, 2009, adopted

an urban renewal plan for the Downtown Wyandanch Urban Renewal Area (the “**Downtown Wyandanch Urban Renewal Plan**”); and

WHEREAS, to accomplish the purposes of the Act, and in accordance with the Downtown Wyandanch Urban Renewal Plan, the Agency has previously undertaken the following five “projects” (within the meaning of the Act): (i) “Project A”, consisting of the acquisition of a leasehold interest in, and the construction and equipping of, an approximately 122,234 square foot mixed-use residential/commercial development, which includes approximately 17,500 square feet of commercial nonresidential space located on the ground floor, with balance of the facility being used as multi-family residential space that includes work force housing, located at District 0100, Section 040.00, Block 02.00, Lot 48.019 on the Official Tax Map of Suffolk County; (ii) “Project B”, consisting of the acquisition of a leasehold interest in, and the construction and equipping of, an approximately 99,912 square foot mixed-use residential/commercial development, which includes approximately 17,553 square feet of commercial nonresidential space located on the ground floor, with balance of the facility being used as multi-family residential space that includes work force housing, located at District 0100, Section 040.00, Block 02.00, Lot 48.010 on the Official Tax Map of Suffolk County; (iii) “Project D”, consisting of the acquisition, construction and equipping of an approximately 82,091 square foot multi-family residential rental facility with a 100% affordability component, containing one building located at District 0100, Section 040.00, Block 02.00, Lot 48.007 on the Official Tax Map of Suffolk County; (iv) “Project E”, consisting of the acquisition, construction and equipping of an approximately 106,200 square foot multi-family residential rental facility with a 100% affordability component, containing one building located at District 0100, Section 040.00, Block 02.00, Lot 48.020 on the Official Tax Map of Suffolk County; and (v) the construction of a five-story parking garage by the MTA; and

WHEREAS, to further accomplish the purposes of the Act, and in accordance with the Downtown Wyandanch Urban Renewal Plan, the Agency has entered into negotiations with the Company for the undertaking of a “project,” within the meaning of the Act (the “**Project**”), consisting of the acquisition, construction, furnishing and equipping by the Company of an approximately 243,465 square foot, multi-family residential rental housing facility, including 8,674 square feet of community facility space located on that certain approximately 3.223 acre parcel of land located at 300 Long Island Avenue, Wyandanch, New York 11798 constituting a commercial facility under the Act (the “**Land**”), and the acquisition and installation of certain equipment, furnishings and personal property therefor (the “**Facility Equipment**”), all for use as an approximately 218-unit multi-family rental housing facility with a 100% affordability component (the Land, Improvements, including construction, renovation and reconstruction thereof, and the Facility Equipment, collectively the “**Facility**”); and

WHEREAS, the Project and the Facility are an integral part of the effectuation of the Downtown Wyandanch Urban Renewal Plan and the construction of the Facility is a primary component of such plan; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to complete the Project Work (as defined in Schedule A); and

WHEREAS, The Town has on the date hereof transferred fee title to the Land and the improvements thereon (if any) existing on the date hereof to the Company; and

WHEREAS, the Company has agreed to lease the Land and the improvements thereon (if any) existing on the date hereof to the Agency under a “straight-lease transaction” (as defined in the Act) pursuant to the terms of the Company Lease (as defined in Schedule A); and

WHEREAS, the Company has agreed as the Agency’s agent to undertake the Project Work including the acquisition, construction, equipping and furnishing of the Facility and to transfer title to the Facility Equipment to the Agency pursuant to a certain Bill of Sale, dated as of the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to sublease the Land, the improvements thereon (if any existing on the date hereof) and the Facility to the Company, and the Company desires to rent the Land, the improvements thereon (if any existing on the date hereof) and the Facility from the Agency, under a straight-lease transaction upon the terms and conditions set forth in this Lease Agreement; and

WHEREAS, the Agency adopted the Authorizing Resolution (as defined in Schedule A), authorizing the undertaking of the Project.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

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

(b) The Agency will acquire a leasehold interest in the Land and Improvements existing on the date hereof, cause the Project Work to be undertaken by the Company to be in

accordance with the provisions hereof and will sublease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) The execution and delivery of the Agency Documents and the other documents contemplated thereby, the consummation of the transactions contemplated thereby, and the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will not conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

(e) The Agency has been induced to enter into this Lease Agreement by the Company's agreement to undertake the Project Work and utilize the Facility in the Town of Babylon, New York, in furtherance of the Public Purposes of the Agency.

(f) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents that are necessary or desirable to carry out the intent and purposes of this Lease Agreement.

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained (such representations and warranties survive the execution hereof and are to remain operative and in full force and effect regardless of the issuance of any investigations by or on behalf of the Agency or the results thereof):

(a) The Company is a limited liability company, organized and existing under the laws of the State of New York, is in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Company's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the

Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility, the Project Work and the design, and operation of the Facility will conform to all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

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

(e) The Facility is and will continue to be a “project” as such quoted term is defined in the Act. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a “project” as such quoted term is defined in the Act.

(f) The transactions contemplated by this Lease Agreement shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of the State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within the State except as permitted by the Act.

(g) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Executive Director, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(e) and 2.2(f) above, and 9.3 of this Lease Agreement, provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without limiting the generality of the foregoing, the Company will provide the Agency with any and all information and materials describing proposed Facility occupants as necessary.

(h) The Company will cause future tenants of the Facility, other than Residential Tenants, if any, to execute and deliver to the Agency a tenant agency compliance agreement substantially in the form attached hereto as Exhibit X, prior to the occupancy of the Facility by such tenant, in accordance with the provisions of Section 9.3 hereof.

(i) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law (the “GML”) Section 862.

(j) There is no action or proceeding pending or, to the best of the Company’s knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Lease Agreement or any other Company Document.

(k) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Lease Agreement and each other Company Document or in connection with the performance of its obligations hereunder and under each Company Document.

(l) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission that could cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statement not misleading.

(m) The Company is not a Prohibited Person.

(n) The Company covenants to use and maintain the Facility as an Affordable Housing Project for the Lease Term.

(o) The Company covenants that substantial completion of the Facility will occur no later than June 29, 2026, provided however, in the event the Company provides written evidence to the Agency that either the Bank or HFA has consented to completion of the Facility beyond June 29, 2026 then such completion date will be automatically extended to match any extension of the completion date under the Loan Documents approved by the Bank or HFA, subject to the Agency's reasonable consent (the "**Completion Date**").

ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) a leasehold interest in the Land and Improvements existing thereon on the date hereof, and (ii) lien-free title to the Facility Equipment, and will convey or cause to be conveyed to the Agency for further lease to the Company lien-free title to or a leasehold interest in the Facility Equipment and any improvements to the Land and Improvements acquired after the date hereof, in each case except for Permitted Encumbrances.

Section 3.2 Title Report and Survey. The Company has obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) reflecting all matters of record with respect to the Land and existing Improvements, including municipal searches and (ii) a current or updated survey of the Land and the existing Improvements certified to the Agency.

Section 3.3 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold interests therein secure the obligations of the Company to the Agency under this Lease Agreement, including the Company's obligation to acquire and maintain the Facility and complete the Project Work on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of the Agency, the Company will complete the Project Work in accordance with the Plans and Specifications and Project Budget.

(b) The Company may revise the Plans and Specifications and Project Budget from time to time without the consent or approval of the Agency; provided that the Facility shall retain its overall configuration and intended purposes and shall remain a “project” as defined in the Act and provided further that the Company shall notify the Agency of any reduction in the Project Budget relating to the acquisition, construction, renovation or equipping of the Facility by more than fifteen percent (15%) in the aggregate.

(c) Except as set forth in Section 6.2 hereof, fee or leasehold title, as applicable, to all materials, equipment, machinery and other items of Property incorporated or installed in or placed in, upon, or under the Facility shall vest in the Agency immediately upon the Company’s obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest such title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) Subject to the provisions of this Lease Agreement, the Agency shall enter into, and accept the assignment of, such contracts as the Company may reasonably request to the extent necessary to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply in all material respects with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions that may be required to be inserted therein by such provisions.

Section 3.5 Identification of Facility Equipment. All Facility Equipment that is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same was installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. On the Completion Date, the Company shall deliver to the Agency: (i) a certificate signed by an Authorized Representative of the Company stating (a) that the Project Work has been completed in accordance with the Plans and Specifications, if any, together with a written description of the final Project costs, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; and (ii) such other certificates as may be reasonably required by the Agency and in form and substance satisfactory to the Agency, including without limitation, a Certificate of Occupancy or a temporary certificate of occupancy. The Company agrees to complete the Project

Work by the Completion Date; provided, the Company may request, and the Agency may grant, reasonable extensions of this deadline for good cause shown.

Section 3.7 Remedies to be Pursued against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person that the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor, subcontractor, materialman or other person shall be paid to the Company.

Section 3.8 Construction Signage. During the Construction Period, the Agency shall have the right to erect on the Facility site, subject to the approval of the location by the Company and compliance with all applicable laws, ordinances and regulations, at the Agency's own cost and expense, an appropriate sign stating that financial assistance for the Facility has been provided through the Agency.

Section 3.9 First Source Hiring Program. During the Construction Period, the Company agrees to (i) comply with the Town of Babylon First Source Hiring Program (the "**Hiring Program**") described in Exhibit G hereto and (ii) require that each contract entered into with a prime contractor for the Project will incorporate the Hiring Program as a material term of such contract and will provide that the Hiring Program provisions of such contract will be enforceable by the Town against such prime contractor as a third party beneficiary of such contract.

Section 3.10 Labor Agreements. The Company will undertake good faith negotiations with the union contractors of the critical trades (including but not limited to, labor, rough and finish carpentry, heating, ventilation and air conditioning, plumbing, electrical and fire protection contractors) involved in the construction of the Facility with the goal of securing subcontract agreements with all such trades where an agreement is feasible and not in excess of the amount in Company's development budget for such trades approved by the Lender. The Company will reasonably notify the Town Attorney of the Town, as a representative of the Town (or any other representative designated by the Town or the Town Supervisor for such purpose) of the nature and content of any such negotiations.

ARTICLE IV
LEASE OF FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby subleases the Facility, consisting of the Land (as more particularly described in Exhibit A attached hereto) and the Improvements and the Facility Equipment (as such Facility Equipment is more particularly described in Exhibit B attached hereto) to the Company and the Company hereby rents the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 8.1, 8.3, 9.3 and 10.2 hereof), and the subleasehold estate created hereby shall commence, and the Company shall accept possession of the Facility, on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the term of the estate created hereby (the “**Lease Term**”) shall terminate at 11:59 p.m. on the Abatement Termination Date (as defined in Schedule A).

(c) Except as provided in Section 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company’s sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the balance of the Agency’s administrative fee in the amount of \$636,219.00 (equal to the closing fee of \$635,019.00 plus the public hearing notice and deviation memo fee of \$1,200.00). The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) on the Closing Date.

(b) In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, the Company shall pay to the Agency PILOT Payments in the amount as described in Section 5.1 hereof.

(c) In addition to the payments of basic rent and PILOT Payments pursuant to Sections 4.3(a) and (b) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency’s ownership, leasing, subleasing, or financing of the Facility, or (ii) in connection with the carrying out of the Agency’s duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(d) The Company, under the provisions of this Section 4.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 4.3(a) or 4.3(c), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. 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 COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY 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.

ARTICLE V
PILOT PAYMENTS; SALES TAX EXEMPTION; MORTGAGE RECORDING TAX
EXEMPTION AND RECAPTURE OF BENEFITS

Section 5.1 PILOT Payments.

(a) *Payments Prior to Abatement Commencement Date:*

The Abatement Commencement Date shall be as defined in Exhibit C hereof. Prior to the Abatement Commencement Date, the Company shall not be required to make PILOT Payments.

(b) *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 Company agree, however, that the Company 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 this Section 5.1 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 Assessor's 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 description of the Facility Realty and the tax map of the Town or the existence of another impediment to implementation of the Agency's exemption contemplated hereunder.

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

For the period commencing on the Abatement Commencement Date until the earlier of (i) the Abatement Termination Date or (ii) the date on which the Agency no longer has a leasehold interest in the Facility Realty, the Company shall make payments in lieu of real estate taxes (the "**PILOT Payments**") in accordance with the schedule set forth in Exhibit C hereto.

(d) The Company shall pay, the amounts set forth in Exhibit C hereto, within forty (40) days after receipt of each bill therefor from the Agency. Failure to receive a bill shall not relieve the Company, of its obligation to make all payments provided for hereunder, but no penalties or interest shall accrue for any bills not received by the Company. Payments shall be made directly to the Agency. Payments made after the due date(s) as set forth in the applicable bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Jurisdictions.

(e) The Agency may file a lien on the Facility Realty in order to secure amounts due the Agency hereunder or, at its election, may at any time require that the Company grant such lien to the Agency as a condition to any lease of the Facility to the Company pursuant to the terms hereof. A Memorandum of this Lease Agreement may be filed in the real property records of the County of Suffolk at the expense of the Company.

(f) Prior to the Tax Year commencing December 1, 2056, the Company shall have no authority to file grievances, protests and/or demands for judicial review, protesting any present or future assessment on the Facility Realty. On or after the Tax Year commencing December 1, 2056, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility pursuant to the provisions of Article 5 and 7 of the New York State Real Property Tax Law or any other applicable law, as the same may be amended from time to time and (ii) the Agency, at the request of the Company, shall request that the Assessor of the Town of Babylon, or any other assessor having jurisdiction to assess the Facility, take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility is reduced as a result of any such administrative or judicial review so that the Company would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Jurisdictions, as if the Company were the owner of the Facility exclusive of the Agency's leasehold interest therein, the Company shall not be entitled to receive any refund of, or credit against, the PILOT Payments paid or to be paid pursuant to this Lease Agreement and the PILOT Payments set forth in Exhibit C hereto shall not be reduced in any respect. In no event shall the Agency or any Taxing Jurisdiction be required to remit to the Company or any Taxing Jurisdiction any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

(g) Intentionally Omitted.

(h) To the extent the Facility Realty 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 judgement of a Court of competent jurisdiction or otherwise, the obligations of the Company to make payments in lieu of real estate taxes under this Section 5.1 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 Company from contesting the validity or constitutionality of any such amendment, legislative change or judicial decision.

(i) If the Company enters into any written agreement with any Taxing Jurisdiction providing for payments in lieu of taxes by the Company to any or all of them, so much of this Section 5.1 as it relates to the Taxing Jurisdiction with which the Company 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 5.1 by reference and made a part hereof as an amendment or modification hereof. Should the

Company receive any real property tax exemption from any of the Taxing Jurisdictions, this Section 5.1 shall automatically be modified to reflect the extent of such exemption.

(j) *Subsequent Alterations and Improvements:*

If, at any time after completion of the Project Work, the Company shall make any capital alterations of or additions to the Facility Realty, the aggregate value of which in each instance shall equal or exceed \$50,000 (the “**Additional Improvements**”), the Company shall deliver written notice to an Authorized Representative of the Agency of same within thirty (30) days after the completion thereof. Such alterations and additions shall not include repairs or the replacement of existing facilities that have become worn out or obsolete, or restoration work following a casualty. 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 Company shall make additional payments in lieu of taxes equal to:

(1) the amount of increase in assessed valuation of the Facility Realty 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.

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

The Company understands and agrees that the Company is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Company 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, if any, utilized or occupied by any Person other than the Company, any Affiliate thereof, any Transferee pursuant to the terms of Section 14.12 hereof, or Permitted Tenants, for so long as such utilization or occupation shall continue. The Company 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 Company or any Affiliate thereof, aside from any Transferee pursuant to the terms of Section 14.12 hereof or Permitted Tenants. The Company 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 Company, Affiliates thereof, any Transferee pursuant to the terms of Section 14.12 hereof, or Permitted Tenants. The Company understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Company as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Company 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 Company, Affiliates thereof, any Transferee pursuant to the terms of Section 14.12 hereof, or Permitted Tenants, 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 Lease Agreement or upon the occurrence of an Event of Default under this Lease Agreement, the Company shall be required to make payments in lieu of real estate taxes on the Facility Realty in such amounts as would result from taxes levied on the Facility Realty as if the Agency did not have a 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.

(l) *Survival of Obligations:*

The obligations of the Company under this Section 5.1 shall survive the termination or expiration of this Lease Agreement for any reason whatsoever, provided, however, under no circumstances shall the Company be required to pay both (i) payments in lieu of taxes under this Section 5.1 and (ii) taxes for which payments in lieu thereof were or are being paid pursuant to this Section 5.1 levied and assessed upon or against the Facility. 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 5.1, for good cause shown.

(m) *Taxes Assessments and Charges:*

The Company 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 this Section 5.1 hereof) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Lease Agreement or any estate or interest of the Agency or the Company in the Facility during the Lease Term, 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 Company any notice, bill or other statement received by the Agency concerning any Imposition. The Company 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 taxes in respect of which amounts are payable under this Section 5.1) solely due to the Agency's leasehold interest in the Facility, the Company shall pay all Impositions to the appropriate authorities imposing such Impositions equivalent to the Impositions that would have been imposed on the Facility if the Agency did not have a leasehold interest in the Facility.

(n) *485-b Waiver:*

The Company, in recognition of the benefits provided under the terms hereof, including, but not limited to, the Real Property Tax Abatements provided hereunder, and for as long as the Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the New York State Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the GML) with respect to the Facility Realty.

Section 5.2 Sales Tax Exemption.

(a) The Agency hereby appoints the Company as the Agency's true and lawful agent, and the Company hereby accepts such agency, to (i) complete the Project Work in accordance with the Plans and Specifications (if any), (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things that may be requisite or proper for the Project Work, with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) pay all fees, costs and expenses incurred in connection with the Project Work, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever that may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) 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 Company, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Lease Agreement, to act as its agent in connection with the Facility 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 Company and its Agents pursuant to this Lease 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 Closing Date and expiring upon the earliest of (A) the Abatement Termination Date, (B) the Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Lease 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 Lease 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 Company at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Facility.

(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, other than the Company, its Agents, or any Transferee pursuant to the terms of Section 14.12 hereof, as described on Exhibit D, without the prior written consent of the Agency.

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

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company 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.

(ix) The Company agrees that the aggregate amount of Company Sales Tax Savings realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company 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 the authority of this Lease Agreement, it must complete the following steps:

(i) For each Agent, the Company must complete and submit Form ST-60 to the Agency. The foregoing is required pursuant to the GML Section 874(9) and Form ST-60 and the regulations relating thereto which 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.

(ii) Following receipt by the Agency of the completed Form ST-60, such Agent must be appointed as Agent by the Agency, by execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit D. The determination whether 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 Company. The Company must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

- (iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

(e) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company 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 NEW YORK STATE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, 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 NEW YORK STATE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) Form ST-123 Requirement. As an agent of the Agency, the Company 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 Company or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) 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 Facility 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.

(g) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYSDTF, and with a copy to the Agency, in a manner consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), of the value of all Company Sales Tax Savings claimed by the Company and each Agent in connection with the

Facility. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) Sales Tax Registry Filing Requirement. No later than January 31st of each year, the Company shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit E, which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding December 31st (or such shorter period beginning on the Closing 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 Company shall file with the Agency a completed Sales Tax Registry which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the period from the preceding January 1st to the Termination Date.

(i) Special Provisions Relating to State Sales Tax Savings.

- (i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML 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 Lease Agreement and the Special Provisions, the Special Provisions shall control.
- (ii) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company (provided that the Agency’s recapture rights, as set forth in this paragraph, shall not apply to any Lender or designee of such Lender that takes title to the Facility Realty) to which the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, 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 to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(j) Subject to the provisions of subsection (i) above, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company 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 two percent (2%) plus the Prime Rate 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 Company or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Company, the Company 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 Company and any Agent, and require all appropriate officers and employees of the Company 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 Company 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 Company under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. To the extent needed by the Company to exempt mortgages from the mortgage recording tax that are recorded in connection with the financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work, the Agency hereby grants to the Company exemption, to the extent permitted by law, from mortgage recording taxes for one or more Mortgages securing an aggregate principal amount not to exceed \$5,000,000 or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work (the “**Mortgage Recording Tax Exemption**”). The Company and the Agency acknowledge that it is currently not anticipated that the Company will need the Agency to provide a Mortgage Recording Tax Exemption for the Mortgages that will be recorded in connection with the construction financing of the Project Work, since it is anticipated that the Mortgagee of the Mortgages for the construction loan will be HFA and any Mortgages granted to HFA are exempt from the mortgage recording tax pursuant to law. However, the Company and the Agency acknowledge that it is currently anticipated that the Company will need the Agency to provide a Mortgage Recording Tax Exemption for certain Mortgages that will be recorded in connection with the permanent financing of the Project Work, since it is anticipated that the Mortgagee of the Mortgages provided by the County of Suffolk and the Town of Babylon will not be exempt from the mortgage recording tax.

Section 5.4 Recapture of Agency Benefits. It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if the Company fails to cause substantial completion of the Facility on or prior to the Completion Date (a “**Recapture Event**”), the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency

(except as otherwise specified below) as a return of public benefits conferred by the Agency one hundred percent (100%) of the Recaptured Benefits (as defined below).

(a) As used in this Section 5.4, the term “**Recaptured Benefits**” shall mean, collectively:

(1) all real estate tax benefits that have accrued to the benefit of the Company commencing from and after the Abatement Commencement Date, and during the period of time that the Agency had a leasehold or controlling interest in the Facility Realty, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under Section 5.1 hereof, if any, (which amount may be zero) from those payments that the Company would have been required to pay during the term of this Lease Agreement (within the meaning of Section 4.2(b) hereof) had the Town determined the amount of such real estate taxes as would be due if the Agency had not had a leasehold or controlling interest in 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 Lease Agreement, including, but not limited to, any exemption from any applicable state or local sales and use tax, mortgage recording tax and filing and recording fees accruing from and after the date hereof.

Notwithstanding the foregoing, no payment will be due under this Section 5.4 if the failure to substantially complete the Facility has arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, (ii) the inability at law of the Company to substantially complete the Facility, which inability has arisen in good faith through no fault on the part of the Company or any Affiliate of the Company, or (iii) a force majeure event, as defined in Section 10.1(b) hereof.

(b) If any payment owing by the Company under this Section 5.4 is not paid by the Company upon demand by the Agency, such payment shall bear interest from the date of such demand at the then current interest rate imposed on delinquent payments of real property taxes until the Company has paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(c) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section 5.4.

(d) The provisions of this Section 5.4 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary. The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, the payment of Recaptured Benefits in whole or in part, for good cause shown.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the

Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility or cause the Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility; and (iii) operate the Facility in a sound and economic manner.

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. The Company may not make any changes to the footprint of the Facility or any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Facility that will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.9 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Governmental Charges and Utility Charges.

(a) Subject to the Sales Tax Exemption and the Real Property Tax Abatements as provided hereunder, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all

utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

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

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts; which such obligation shall survive the expiration or termination of this Lease Agreement.

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

Section 6.4 Insurance Required. At all times throughout the Lease Term, including during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$2,000,000 or the amount as may be required by any Lender. During any Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such

earlier date as any employees of the Company, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with an aggregate limit of liability of not less than \$2,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with an aggregate limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any Construction Period.

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

- (i) Workers' compensation and employer's liability with limits in accordance with applicable law.
- (ii) Comprehensive general liability providing coverage for:
 - Premises and Operations
 - Products and Completed Operations
 - Owners Protective
 - Contractors Protective
 - Contractual Liability
 - Personal Injury Liability
 - Broad Form Property Damage
(including completed operations)
 - Explosion Hazard
 - Collapse Hazard
 - Underground Property Damage Hazard

Such insurance shall have an aggregate limit of liability of not less than \$2,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

- (iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$2,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by this Lease Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) through (e) hereof shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 6.4 hereof shall provide for at least ten (10) days’ prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii) and (iv) shall name the Agency and the Company as additional insureds.

(b) A copy of the insurance policies required by Section 6.4(a), (c), and (e) hereof shall be deposited with the Agency on or before the date hereof. A copy of the insurance policies required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment, assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay or bond any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Mortgage is in effect or the Mortgagee has any interest in the Facility arising under or related to the Mortgage, whether by foreclosure or otherwise, and the Facility is damaged or destroyed, in whole or in part, then casualty insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage, as then in effect, as regards the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage is not in effect and the Mortgagee has no interest in the Facility arising from the Mortgage and if the Facility or any part or component thereof is damaged or destroyed (in whole or in part) at any time during the Lease Term:

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, including, without limitation, the PILOT Payments (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);

(iii) the Company shall promptly give written notice thereof to the Agency;

(iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.1(e) hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damage or destruction shall be subject to the following conditions:

(i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) the Facility shall continue to constitute a "project" as such term is defined in the Act;

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances or which the Agency consents to in writing; and

(iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) If such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration or relocation, the Company shall nonetheless complete the work, or cause the work to be completed pursuant to the terms of this Lease Agreement, and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall not repair, replace, rebuild, restore or relocate the Facility, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(f) Notwithstanding anything to the contrary herein, if the Mortgage is in effect or the Mortgagee has any interest in the Facility arising under or related to the Mortgage, whether by foreclosure or otherwise, the disposition of the Net Proceeds (with respect only to casualty insurance) resulting from damage or destruction of the Facility shall be controlled by the provisions of the Mortgage.

Section 7.2 Condemnation.

(a) If the Mortgage is in effect or the Mortgagee has any interest in the Facility arising under or related to the Mortgage, whether by foreclosure or otherwise, and title to or the use of all, substantially all or less than substantially all of the Facility is taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage is not in effect and the Mortgagee has no interest in the Facility arising from the Mortgage and if title to or use of the Facility is taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to repair, replace, rebuild, restore or relocate the Facility or to acquire, by construction or otherwise, facilities of substantially the same nature as the Facility (“**Substitute Facilities**”);

(ii) there shall be an equitable adjustment of the amounts payable by the Company under this Lease Agreement including, without limitation, the PILOT Payments (whether or not the Facility is repaired, replaced, rebuilt, restored or relocated or Substitute Facilities are acquired) to reflect the portion of the Facility so taken;

(iii) the Company shall promptly give written notice thereof to the Agency;

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and

(v) if the Facility is not repaired, replaced, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

(b) Any repairs, replacements, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions:

- (i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;
- (ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;
- (iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and
- (iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically described herein. Any Net Proceeds of a Condemnation not used to repair, replace, rebuild, restore, or relocate the Facility shall belong to the Company.

(d) If such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company shall nonetheless complete, or cause to be completed, the work or the acquisition pursuant to the terms of this Lease Agreement and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment, that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall not repair, replace, rebuild or restore the Facility or acquire Substitute Facilities, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall belong to the Company.

(f) Notwithstanding anything to the contrary herein, if the Mortgage is in effect or the Mortgagee has any interest in the Facility arising under or related to the Mortgage, whether by foreclosure or otherwise, then the Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage.

Section 7.3 Condemnation of Company-Owned Property. The Company shall be entitled to the Net Proceeds of any casualty, damage or destruction insurance proceeds or any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times on reasonable notice to inspect the Facility, including, without limitation, for the purpose of ascertaining the condition of the Environment at, on or in the vicinity of the Facility.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (the “**Indemnified Parties**”) shall not be liable for and agrees to protect, defend, indemnify, save, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys’ and experts’ fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land, (ii) the Project Work and the Agency’s acquisition, owning, leasing and subleasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this Lease Agreement, and all causes of action and reasonable attorneys’ fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the Project Work or the operation or use of the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or

Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's interests and rights in, to, and under the Lease

Agreement or the termination of the Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Lease Agreement, or any other Transaction Document.

(c) In the event of any claim against the Indemnified Parties by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it. Notwithstanding anything to the contrary herein, the following transfers shall be permitted without Agency consent: (a) the transfer of non-managing member interests in the Company in accordance with the terms of the Company's Amended and Restated Operating Agreement (the "**Operating Agreement**") provided that the transferee of such non-managing member interest is not a Prohibited Person; and/or (b) the removal of the Managing Member and replacement with an affiliate of Investor in accordance with the terms and conditions of the Operating Agreement provided that such replacement entity is not a Prohibited Person.

Section 8.4 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including,

without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.6 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and financial affairs of the Company.

Section 8.7 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee, tenant or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to the Project Work, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Facility or any part thereof, or of the Project Work, or of any use, manner of use or condition of the Facility or any part thereof or of any companies or associations insuring the premises.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances or encumbrances to which the Agency has consented in writing, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.9 Depreciation. It is the intention of the parties that as between the Agency and the Company that the Company shall be entitled to all depreciation deductions with respect to the Facility 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 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 the Company and the Company 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 the Company 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 the Company.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall cause any and all sublessees to agree, that they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 Employment at the Facility. The Company hereby agrees that the Project will generate an average of approximately (i) 20 full-time construction jobs for the first year of the construction period, (ii) 90 full-time construction jobs for the second year of the construction period, and (iii) 20 full-time construction jobs for the third year of the construction period. The Agency reserves the right to visit the Facility to confirm that the above-stated job creation numbers are being met.

ARTICLE IX
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

Section 9.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof, or any of its rights under this Lease Agreement, without the prior written consent of the Company.

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

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

Section 9.2 Removal of Facility Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Facility Equipment. In any instance where the Company determines that any item of Facility Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

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

(c) The removal of any item of Facility Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the PILOT Payments or any other amounts payable by it under this Lease Agreement.

Section 9.3 Assignment and Subleasing.

(a) Subject to Section 14.12 hereof, this Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed.

(b) Notwithstanding anything contained in this Section 9.3 to the contrary, the Company shall be authorized without the prior consent of the Agency, written or otherwise, in the ordinary operation of the Facility as a multi-family apartment building, to enter into residential leases with Permitted Tenants with respect to the Facility (no one lease of which constitutes all or substantially all of the Facility).

Section 9.4 Merger of Agency. (a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or the transfer of the Agency's interest in the entire Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and shall, upon request, furnish to the Company, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.4(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall each be "**Events of Default**" under this Lease Agreement:

- (i) the failure by the Company (for a period of fifteen (15) days after written notice specifying such failure and requesting that it be remedied has been given to the Company by the Agency) to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a), (b) or (c) hereof;
- (ii) the failure by the Company (for a period of ten (10) days after written notice specifying such failure and requesting that it be remedied has been given to the Company by the Agency) to observe and perform any covenant contained in Sections 2.2(f), (g) or (j), 5.2, 6.3, 6.4, 6.5, 8.2, 8.3, 8.4, 8.11, 9.3, 10.4 and 10.6 and Article XIII hereof;

- (iii) the failure by the Company (for a period of ten (10) days after written notice specifying such failure and requesting that it be remedied has been given to the Company by the Agency) to pay or cause to be paid PILOT Payments or the Recaptured Benefits, in each case on the dates due or prior to the expiration of any grace or cure period;
- (iv) the occurrence and continuation of a Recapture Event;
- (v) any representation or warranty of the Company herein, in any of the Company Documents or in the Project Application Information, shall prove to have been false or misleading in any material respect for a period of thirty (30) days after the receipt of notice by the Agency specifying the false or misleading information; provided that the thirty (30) days toll will be suspended if the Company is actively pursuing a cure and the Event of Default is cured within one hundred and eighty (180) days or it is waived by the Agency;
- (vi) the failure by the Company to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder or under any other Company Document (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency; provided that the thirty (30) days toll will be suspended if the Company is actively pursuing a cure and the Event of Default is cured within one hundred and eighty (180) days or it is waived by the Agency;
- (vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days of any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for ninety (90) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;
- (viii) Reserved;

- (ix) subject to force majeure, the failure by the Company to complete the Project on or before the Completion Date (as may be extended pursuant to the terms of this Lease Agreement) substantially and materially in accordance with the Plans and Specification and the Project Budget; or
- (x) the occurrence and continuance, beyond any applicable grace or cure period, of an Event of Default by the Company under the Company Lease.

The Agency hereby covenants and agrees that the Agency shall deliver to the Mortgagee and Investor written notice of any default by the Company hereunder simultaneously with sending such notice to the Company and that no notice of default given to the Company, and no exercise of any remedy by the Agency as a result of any such default, shall be effective unless such notice has been delivered to the Mortgagee and Investor. The Agency hereby further covenants and agrees that the Mortgagee and Investor have the right, but not the obligation, to cure any default by the Company hereunder and the Mortgagee and Investor shall be afforded (a) a cure period of 30 days in addition to any cure period granted to the Company hereunder or (b) if 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 and/or Investor notifies the Agency of its intention to cure such default and the Mortgagee and/or Investor promptly commences and diligently pursues such cure to completion. The Bank shall have the same notice and cure rights as the Mortgagee under this paragraph so long as: (i) the Bank's letter of credit in favor of HFA is outstanding, or (ii) if such letter of credit has been drawn upon, the Bank is exercising its remedies against the Company and/or the Property covered by this Lease Agreement.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4, 6.1, 8.10 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, terrorist acts, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing as set forth above, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recaptured Benefits, and (D) all other payments due under this Lease Agreement;

(ii) terminate this Lease Agreement and the Company Lease, reconvey the Facility Equipment to the Company and terminate the Sales Tax Exemption authorization. The Agency shall have the right to execute appropriate lease termination documents with respect to the Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such lease termination documents (notwithstanding the above provisions of this sub-paragraph, the Agency hereby agrees that (1) the Agency will not terminate this Lease Agreement or the Company Lease so long as the Investor, the Bank or the Mortgagee is diligently pursuing a cure of any default in accordance with, and within the cure period provided by, the provisions of this Lease Agreement, and (2) in the event of the Company's bankruptcy, if the Company exercises its right to terminate this Lease Agreement and/or the Company Lease as provided herein, or if this Lease Agreement and/or the Company Lease is terminated by operation of law, the Agency agrees to enter into an identical lease(s) with a Permitted Mortgagee Transferee); or

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

(b) No action taken pursuant to this Section 10.2 (including termination of the Lease Agreement) shall relieve the Company from its obligation to make all payments required by Section 4.3 hereof or due and owing PILOT Payments or Recaptured Benefits.

Notwithstanding any other provision hereof to the contrary, in the event of failure of the Company to pay PILOT Payments hereunder at the times and in the amounts as herein provided, the Town may commence legal action in any court of competent jurisdiction directly against the Company for the payment of such amounts. In any such action the Town shall be entitled to recover the PILOT Payments due together with any late payments, interest, expenses, costs and

disbursements together with the reasonable attorneys' fees necessary to prosecute such action. Nothing herein shall be construed as providing the Town with the right to sue and recover from the Agency any PILOT Payments, late payments, interest, expenses, costs and disbursements or any attorneys' fees with respect thereto.

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

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. If the Company defaults under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. If any agreement contained herein is breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Lease Agreement and that no Event of Default exists under this Lease Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.5 hereof.

ARTICLE XI EARLY TERMINATION OF LEASE AGREEMENT OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than forty-five (45) nor more than ninety (90) days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 Conditions to Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 4.2, 10.2 or 11.1 hereof, the Company shall make or cause to be made the following payments:

(a) To the Agency or the taxing authorities, as appropriate pursuant to Section 5.1 hereof: all PILOT Payments due and payable hereunder as of the date of the termination or expiration of this Lease Agreement;

(b) To the Agency: the purchase price with respect to the Facility Equipment of one dollar (\$1.00);

(c) To the Agency: all amounts due and payable under Section 5.4 hereof;

(d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents; and

(e) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Facility Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

ARTICLE XII LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Company or the Agency and the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof and no further documentation shall be necessary to evidence such subordination.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. The Agency hereby agrees to the assignment of leases by the Company under the Mortgage, Assignment of Leases and Rents, and Security Agreement, dated as of the Closing Date, from the Company to HFA. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

Section 12.3 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 12.4 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition of the Facility and/or the Project Work or to reimburse the Company for the cost of acquiring the Facility and/or the Project Work (the "**Loan**"). Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "**Loan Documents**"). The Company shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

Section 12.5 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

ARTICLE XIII
ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company. The Company hereby represents and warrants to the Agency that:

(a) Neither the Facility nor, to the best of the Company's knowledge, any property adjacent to or within the immediate vicinity of the Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Facility.

(c) To the best of Company's knowledge, the soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, in violation of Environmental Law, other than any such substances that occur naturally.

(d) To the best of Company's knowledge, there has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility in violation of any applicable law.

(e) All Environmental Permits necessary for the Project Work and the ownership, use or operation of the Facility either have been obtained and are in full force and effect or will be obtained and will be in full force and effect prior to the commencement of any activities which require such Environmental Permits.

(f) To the best of Company's knowledge, no event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) To the best of Company's knowledge, there are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) To the best of Company's knowledge, there are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Facility.

Section 13.2 Environmental Covenants of the Company. The Company hereby covenants and agrees with the Agency as follows:

(a) The Company shall perform the Project Work and the Company shall use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to perform the Project Work and to use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or Disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits, if any.

(c) The Company shall not cause or permit any change to be made in the present or intended Project Work or use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the Project Work or use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly

advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Facility that could reasonably be expected to cause the Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Facility under any Environmental Law. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Facility or real property or bodies of water adjoining or in the vicinity of the Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Company, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) If at any time the Agency obtains any notice or information that the Company or the Facility, or the use or operation thereof or the Project Work may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual

inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 13.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 13.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Facility or in, to or under the Lease Agreement.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Babylon Industrial Development Agency
47 Main Street
Babylon, New York 11702
Attention: Thomas Dolan, CEO

with a copy to:

William D. Wexler, Esq.
816 Deer Park Avenue
North Babylon, New York 11703-3805
Attention: William D. Wexler, Esq.

and to:

Katten Muchin Rosenman LLP
50 Rockefeller Plaza
New York, New York 10020
Attention: William F. Dudine, Esq.

To the Company:

WR Communities - L, LLC
c/o Albanese Development Corporation
1001 Franklin Avenue, Suite 300
Garden City, New York 11530
Attention: Russell C. Albanese

with a copy to:

Albanese & Albanese LLP
1050 Franklin Avenue, Suite 500
Garden City, New York 11530
Attention: Arthur L. Colozzi, Esq.

To the Investor:

PNC LIHTC Fund 84, LLC;
PNC LIHTC Fund 86, LLC;
PNC LIHTC Fund 87, LLC; and
Columbia Housing SLP Corporation
121 S. W. Morrison Street, Suite 1300
Portland, OR 97204-3134
Attention: Asset Management

with a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Max Crawford, Esq.

To the Lender:

New York State Housing Finance Agency
641 Lexington Avenue
New York, New York 10022
Attention: Senior Vice President, Multi-family Finance
Attention: Vice President and Deputy General Counsel

To the Bank:

JPMorgan Chase Bank, N.A.
Community Development Banking
277 Park Avenue, 36th Floor
New York, New York 10172
Attention: Dawn Armand

with copies to:

Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attention: Aviva Yakren, Esq.

and, in addition, if related to the Letter of Credit, to:

JPMorgan Chase Bank, N.A.
c/o JPMorgan Treasury Services
10420 Highland Manor Dr., 4th Floor
Tampa, Florida 33610
Attention: Standby Letter of Credit Unit

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

Copies of all notices given either to the Agency or to the Company shall also be sent, in the same manner provided above, to any Lender or Mortgagee, if such Lender or Mortgagee has delivered written instructions to the Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

Section 14.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 14.3 Severability. If any provision of this Lease Agreement is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto. The Company shall be solely responsible for compliance with any provision of the Operating Agreement with respect to any amendment or modification of this Lease Agreement.

Section 14.5 Electronic Execution of Assignments and Certain Other Documents. The terms “execution,” “signed,” “signature,” and any similar terms, as used in this Lease Agreement, or any notice provided hereunder or any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, which shall include DocuSign and similar electronic signature platforms and digital copies of a signatory's manual signature, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 14.6 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.7 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of laws principles.

Section 14.8 List of Additional Facility Equipment; Further Assurances. Upon the Completion Date with respect to the Facility and the installation of all of the Facility Equipment therein, the Company shall prepare and deliver to the Agency, a schedule listing all of the Facility Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Facility Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 14.9 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.10 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared

for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.11 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 Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

Section 14.12 Assignment by Mortgagee.

(a) Notwithstanding any provision herein to the contrary, the Mortgagee shall have the right to transfer and assign the Company's interest in this Lease Agreement and the Company Lease to any purchaser of or successor to the Company's interest in the Facility (i) in any foreclosure proceeding or under any deed, assignment or other instrument delivered in lieu of such foreclosure, in accordance with the Mortgage or (ii) in the event of a default by the Company under Section 10.1(a)(iv) and Section 10.1(a)(vii) hereunder (any such purchaser, successor, assignee or transferee being hereinafter referred to as a "**Transferee**"; it being agreed and acknowledged that any Transferee is subject to the Agency's approval, except for a Permitted Mortgagee Transferee). Notwithstanding anything in this Lease Agreement to the contrary, a Transferee shall be subject to all of the terms, conditions and provisions of this Lease Agreement and the Company Lease and the Agency shall have the right to reasonably approve in accordance with the provisions of this Section 14.12 any such transfer and assignment to such Transferee.

(b) In connection with any transfer and assignment under this Section 14.12, the Mortgagee shall submit to the Agency, for the Agency's approval, the name of any proposed Transferees, together with such details of such proposed Transferees' character, experience and financial position, as well as schedules of their respective principals, owners and affiliates, as the Agency shall reasonably request and is available to the Mortgagee. The Agency shall advise the Mortgagee of the Agency's approval or disapproval of each such proposed Transferee within ten (10) days after the Agency's receipt of the Mortgagee's request for such approval; if the Agency reasonably disapproves (according to the standards set forth in Section 14.12(c) below) a proposed Transferee submitted by the Mortgagee, the Agency shall specify in any notice of disapproval the specific reasons for its disapproval, and the Mortgagee shall have three (3) months from the date of the Agency's notice of disapproval to Mortgagee within which to submit the name of one or more alternate proposed Transferees for each Transferee disapproved by the Agency, together with the background materials and information required above for the initial proposed Transferees. The Agency will then have an additional ten (10) day period within which to approve or disapprove such alternate Transferee(s).

(c) The Agency shall be entitled to require, as conditions to any approval required pursuant to Section 14.12(b), that (and the Agency hereby agrees not to unreasonably withhold, delay or condition the Agency's approval of any Transferee that meets all of the following conditions):

- (i) any proposed Transferee shall not be a Prohibited Person and shall have the qualifications and financial responsibility, as reasonably determined by the


Agency, necessary and adequate to fulfill the obligations undertaken in this Lease Agreement and the Company Lease by the Company with respect to the Project and the Facility and such qualifications and financial responsibility of the proposed Transferee shall be comparable to the qualifications and financial responsibility of the Company on the date hereof;

- (ii) any proposed Transferee, by instrument in writing satisfactory to the Agency and in form recordable in the Suffolk County Clerk's Office, shall, for itself and its successors and assigns, and expressly for the benefit of the Agency, have expressly assumed all of the obligations of the Company under this Lease Agreement and the Company Lease and agreed to be subject to all the conditions and restrictions to which the Company is subject; provided, however, that such transferee shall not be required to cure defaults of the Company under Section 10.1(a)(vii) of this Lease Agreement; and
- (iii) prior to the transfer or assignment, there shall be submitted to the Agency all instruments and other legal documents involved in effecting any transfer or assignment; and if such documents are approved by the Agency, its approval shall be indicated in writing.

(Remainder of Page Intentionally Left Blank - Signature Pages Follow)

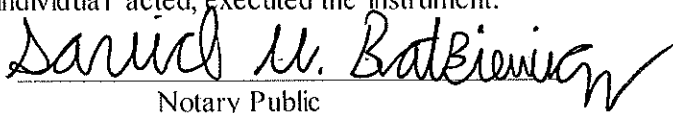
IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

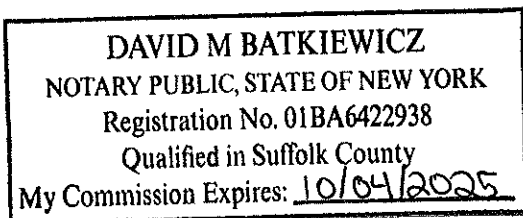
**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

By: , CEO
Name: Thomas E. Dolan
Title: Chief Executive Officer

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

On the 12th day of June, 2023, before me, the undersigned, personally appeared **Thomas E. Dolan**, 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 or entity on behalf of which the individual acted, executed the instrument.


Notary Public



Signature Page to Lease Agreement
Page 1 of 2

WR COMMUNITIES – L, LLC

By: Albanese WRC – L, LLC
Its Managing Member

By: 
Name: Christopher V. Albanese
Title: Manager

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

On the 13 day of June, 2023, before me, the undersigned, personally appeared **Christopher V. Albanese**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

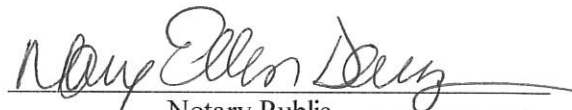

Notary Public MARYELLEN DAVIS
Notary Public, State of New York
No. 01DA6347674
Qualified in Nassau County
Commission Expires September 12, 2024

EXHIBIT A
Legal Description of Real Property

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND SITUATED, LYING AND BEING IN THE TOWN OF BABYLON, COUNTY OF SUFFOLK AND STATE OF NEW YORK, AND SHOWN AS LOT 1 ON A MAP ENTITLED "MAP OF WYANDANCH RISING PHASE 2 DEVELOPMENT – PART 1" FILED IN THE SUFFOLK COUNTY CLERK'S OFFICE ON JUNE 5, 2023 AS MAP NO.12279 AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

Commencing at a point formed by the northeast side of Straight Path and Commonwealth Drive; Thence N 21°19'18" E, a distance of 256.49 feet to the point of **BEGINNING**.

Running thence the following course and distance from said point of BEGINNING, N 21°19'18" E, 195.03 feet

Running thence N 47°07'23" E, 18.01 feet to a point,

Running thence the following three (3) courses and distances,
N 72°52'18" E, 125.20 feet
N 66°32'45" E, 151.26 feet
N 72°52'18" E, 101.61 feet

Running thence along the arc of a curve to the right having a radius of 15.00 feet and a length of 22.75 feet to a point,

Running thence along the arc of a curve to the left having a radius of 106.50 feet and a length of 99.02 feet to a point,

Running thence along the arc of a curve to the right having a radius of 15.00 feet and a length of 22.69 feet to a point,

Running thence the following ten (10) courses and distances,
S 13°10'18" W, 247.20 feet
N 76°49'42" W, 135.29 feet
S 13°10'18" W, 179.68 feet
N 57°10'41" W, 75.96 feet
N 13°10'18" E, 63.84 feet
N 68°26'05" W, 35.70 feet
S 21°33'55" W, 30.04 feet
N 68°26'05" W, 119.81 feet
S 21°33'55" W, 16.37 feet
N 68°26'05" W, 105.56 feet to the point or place of **BEGINNING**.

Said real property contains 140,382 square feet or 3.223 acres more or less.

EXHIBIT B

Facility Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the Town of Babylon Industrial Development Agency's WR Communities – L, LLC 2023 Facility, located at 300 Long Island Avenue, Wyandanch, New York 11798, and leased to the Company pursuant to the Lease Agreement.

EXHIBIT C

The Company shall be obligated to make **PILOT Payments** (i) with respect to Wyandanch School District, Wyandanch Library, Suffolk County and the Town of Babylon taxes for each tax year (December 1 to and including November 30) starting with the tax year commencing December 1, 2026 (the “**Abatement Commencement Date**”) to and including the tax year commencing December 1, 2055 in the amounts set forth below and (ii) for each tax year commencing December 1, 2056 and thereafter, the Company shall pay the full real estate taxes levied for the Wyandanch School District, Wyandanch Library, Suffolk County and the Town of Babylon. Notwithstanding the forgoing, the Abatement Commencement Date may be postponed for delays due to a “force majeure” event, as such term is defined in Section 10.1(b) of the Lease Agreement; in such event, the dates mentioned above would be postponed by the amount of time of any such delay. Capitalized terms used but not otherwise defined in this Exhibit C shall have the same meaning as set forth in the Lease Agreement.

<u>December 1</u>	SCHOOL DIST. – WYANDANCH	LIBRARY TAX – WYANDANCH	County	Town	Total
2026	\$159,625	\$13,632	\$28,828	\$38,739	\$240,824
2027	164,414	14,041	29,693	39,901	248,049
2028	169,346	14,463	30,584	41,097	255,490
2029	174,427	14,896	31,500	42,332	263,155
2030	179,659	15,343	32,447	43,601	271,050
2031	185,049	15,804	33,420	44,909	279,182
2032	190,601	16,278	34,423	46,255	287,557
2033	196,319	16,766	35,455	47,644	296,184
2034	202,208	17,269	36,519	49,074	305,070
2035	208,274	17,787	37,615	50,546	314,222
2036	214,523	18,321	38,743	52,062	323,649
2037	220,958	18,870	39,905	53,625	333,358
2038	227,587	19,437	41,103	55,232	343,359
2039	234,415	20,020	42,335	56,890	353,660
2040	241,447	20,620	43,606	58,597	364,270
2041	248,690	21,239	44,914	60,355	375,198
2042	256,151	21,876	46,262	62,165	386,454
2043	263,836	22,532	47,649	64,031	398,048
2044	271,751	23,208	49,079	65,951	409,989
2045	279,903	23,904	50,550	67,932	422,289
2046	288,300	24,622	52,067	69,969	434,958
2047	296,950	25,360	53,629	72,068	448,007
2048	305,858	26,121	55,239	74,229	461,447
2049	315,034	26,905	56,895	76,456	475,290
2050	324,485	27,712	58,602	78,750	489,549
2051	334,219	28,543	60,359	81,114	504,235

EXHIBIT C-1

2052	344,246	29,399	62,171	83,546	519,362
2053	354,573	30,281	64,037	86,052	534,943
2054	365,210	31,190	65,957	88,634	550,991
2055	376,167	32,126	67,937	91,291	567,521
Total	7,594,225	648,565	1,371,523	1,843,047	11,457,360

2056 and thereafter Full taxes due on the assessed value of the Facility on December 1, 2056 (and thereafter) and in accordance with the then current tax rate and then current thereafter assessed value of the thereafter land and improvements constituting the Project.

The tax benefits provided for in this schedule shall be deemed to commence on the Abatement Commencement Date. In no event shall the Company be entitled to receive real property tax benefits due to the Project under the Lease Agreement for a period longer than the period set forth in the schedule immediately above. Notwithstanding the foregoing schedule, the Company further covenants and agrees that for any period that the Agency continues to hold a leasehold interest in the Facility after the Abatement Termination Date the Company shall pay one hundred percent (100%) of the taxes due on the assessed value of the Facility in accordance with the then current tax rate of the Town, the Wyandanch School District, the Wyandanch Library District and Suffolk County and the then current assessed value of the Facility 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 Section 5.1 of the Lease Agreement.

EXHIBIT D

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: June [__], 202_

ELIGIBLE LOCATION:

**300 Long Island Avenue
Wyandanch, New York 11798**

_____, 202_

TO WHOM IT MAY CONCERN

Re: Town of Babylon Industrial Development Agency
(WR Communities – L, LLC 2023 Facility)

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 Lease and Project Agreement, dated as of June 29, 2023 (the “Lease Agreement”), between the Agency and WR Communities – L, LLC, a New York limited liability company, having its principal office at c/o Albanese Development Corporation, 1001 Franklin Avenue, Suite 300, Garden City, New York 11530 (the “Company”), the Agency has authorized the Company to act as its agent in connection with the Facility described therein 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 Lease Agreement.

2. Upon the Company’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 Lease 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 Lease Agreement and here under.**

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 Operator or Agent” (“Form ST-60”) to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Company). 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

Facility 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 NEW YORK STATE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, 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 NEW YORK STATE 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 construction, renovation, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, 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 Facility 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 Lease 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 Company to provide services in connection with the Facility, (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 Company 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 Agent/Project Operator of Industrial Development Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file annually with the Company and the Agency (no later than January 31st of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use

tax exemptions claimed by such Agent for the preceding year (ending on December 31st) in connection with the Facility by completing and submitting to the Company and the Agency 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 Facility (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 Company 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 Lease 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 Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company 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 Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, 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 Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

10. Subject to the provisions of Section 9 hereof, if the Agent utilizes the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company 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. 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.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Abatement Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Abatement Termination Date, the agency relationship between the Agency and the Agent shall terminate.

(Remainder of Page Intentionally Left Blank -Signature Page Follows)

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:
Title:

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 Facility:

- (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;
- (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 (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.

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 Facility:

- (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) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(vii) maintenance of the type as shall constitute janitorial services.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT E
Sales Tax Registry

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JANUARY 1, 20__ to DECEMBER 31, 20__

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 REPORTED PERIOD:						

Certification: I, the undersigned, an authorized officer or principal owner of the Company, 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 Company Sales Tax Savings realized by the Company 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 Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Babylon Industrial Development Agency ("BIDA"). This form and information provided pursuant hereto may be disclosed by BIDA in connection with the administration of the programs by BIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Company Name: _____
Signature By: _____
Name (print): _____
Title: _____
Date: _____

EXHIBIT F

PROJECT BUDGET

(Follows this page.)

PROJECT NAME: WYANDANCH BUILDING L

Suffolk County
218 Units

DEVELOPMENT BUDGET

	Total
Acquisition Costs	
Building	\$0
Land	\$562,150
Total Acquisition Costs:	\$ 562,150

Construction Costs	
Contractor Price	
Residential	\$68,829,369
Sitework and Demolition	\$400,000
SSDS	\$0
Commercial Space	\$0
Community Space	\$2,250,000
Parking	\$413,699
Contingent Hard Costs	
General Conditions	\$4,313,584
Overhead	\$1,437,861
Contractor Profit	\$2,875,723
CGU/Excess Insurance	\$2,580,227
Hard Cost Contingency	\$4,155,023
Total Hard Costs:	\$ 87,255,482

Soft Costs	
Accounting & Cost Certification	\$60,000
Appraisal	\$21,500
Architect / Engineer	\$2,041,000
Permits and Expediting	\$751,143
Environmental Phase I & II	\$75,000
Energy Consultant	\$185,000
Geotechnical	\$50,000
Insurance	\$203,685
Market Study	\$21,400
Marketing	\$50,000
FF&E	\$0
Maintenance, Tools, Equipment	\$0
Security Pre CoFO	\$35,000
Initial Operating Deficit	\$332,436
Survey	\$230,000
Title & Recording	\$600,000
Subtotal	\$4,656,164

Construction Lender Fees & Interest	
Construction Interest: LT Bonds	\$5,632,700
Construction Interest: ST Bonds	\$7,829,631
Construction Accrued Interest: Subsidy Loan 1 NCP	\$2,243,230
Paid Interest & Servicing Fee: Subsidy Loan 1 NCP	\$456,426
Paid Interest & Servicing Fee: Subsidy Loan 2 FHFT	\$0
Paid Interest & Servicing Fee: Subsidy Loan 3	\$0
Commitment Fee: Loan 4	\$0
Commitment Fee: Loan 5	\$0
SIHC Fee: Application & Allocation	\$64,000
Lender LC Origination Fee	\$517,502
Lender LC Annual Fee	\$2,645,012
Lender LC Draw Fees	\$162,250
Construction Monitor	\$72,000
Plan & Cost Review	\$8,450
Subtotal	\$19,485,202

Legal Fees and Syndication Costs	
Borrower Legal	\$650,000
Bank Legal	\$275,000
Bank Engineer	\$0
IDA Fees	\$1,875,419
Syndication Fees	\$99,950
Subtotal	\$2,900,369

HFA Bond Issuance & Closing Fees	
HFA Closing Fee	\$1,368,300
NYS Bond Issuance Fee	\$577,080
SONYMA Application Fee	\$24,490
SONYMA MIP (Annual Fee)	\$122,450
SONYMA 1 Month Debt Service	\$158,092
Subtotal	\$2,250,412

Soft Cost Contingency	\$1,352,087
Total Soft Costs:	\$ 30,644,234
Developer Fee - Acquisition	50
Developer Fee - Construction	\$15,200,000
Developer Fee - Total:	\$15,200,000
Capitalized Operating Reserve	\$1,002,697
Pre-Funded Suffolk County Loan Reserve	\$151,875
Total Development Cost:	\$ 134,816,438

EXHIBIT F-1

EXHIBIT G

Town of Babylon

Wyandanch Rising

First Source Hiring Program

I. **Purpose.** This First Source Hiring Program for the Wyandanch Rising project is intended to ensure access to quality employment and training opportunities in construction of the Project. The Town will designate a First Source Referral System to facilitate successful program operation.

II. **Coverage.** This Program applies to all construction performed as part of the Project.

III. **Definitions.** All capitalized terms used herein shall have the following meanings.

“Building L” shall mean the building and related site work to be constructed by Master Developer on the real located at 300 Long Island Avenue, Wyandanch, New York 11798, SCTM: 0100, 057.00, 01.00, 045.002.

“Building” shall mean Building L.

“Designated Construction Training Program” shall mean a pre-apprenticeship program or other job training program designated by the Town as providing basic training in construction skills and safety.

“Designated Direct Entry Program” shall mean a pre-apprenticeship program designated by the Town and approved by the New York State Department of Labor as a direct entry provider.

“Designated Subcontractor” shall mean any Subcontractor designated by the Prime Contractor in the subcontract with such Subcontractor to hire one or more Targeted Workers for a minimum amount of hours pursuant to this Program.

“First Source Referral System” shall mean a system operated by or designated by the Town to refer qualified available construction workers to contractors, including qualified graduates of Designated Direct Entry Programs or Designated Construction Training Programs.

“Hiring Program” shall mean this First Source Hiring Program.

“Major Subcontractor” shall mean a Subcontractor that is projected at the time of the acceptance of its bid to perform at least 5,000 hours of labor in connection with the construction of a Building, based on the hours the Subcontractor estimates in its bid will be required for the scope of work to be performed by the Subcontractor with respect to the construction of the Building.

“Master Developer” shall mean WR Communities LLC, – L, or any agent, partner, successor, or affiliate of WR Communities LLC, – L that retains any construction contractor for performance of construction work on any portion of the Project, including any construction manager.

“Prime Contractor” shall mean any general contractor or construction manager retained by the Master Developer to perform the construction work for any portion of the Project.

“Project” shall mean the construction of Building L of the Wyandanch Rising development project.

“Registered Apprenticeship Program” shall mean an apprenticeship program that is registered with the Department of Labor of the State of New York.

“Subcontractor” shall mean any contractor or subcontractor of any tier retaining workers to perform Project construction work, including the Prime Contractor if the Prime Contractor retains construction trade workers to perform Project construction work. Prime Contractor’s use of management staff and other non-construction employees shall not constitute retention of workers for purposes of this provision.

“Targeted Worker” shall mean an individual who is referred by the First Source Referral System and is a graduate of a Designated Construction Training Program or a Designated Direct Entry Program.

“Town” shall mean the Town of Babylon.

IV. **First Source Hiring Requirements.**

A. **Project-Wide Hiring Commitment.** Master Developer shall ensure compliance with the Project hiring commitment described in the following paragraphs:

1. In construction of the Project, Subcontractors shall (i) hire at least six (6) Targeted Workers and (ii) employ such Targeted Workers for an aggregate of at least 6,000 hours during the time period of construction of the Project. After hiring a Targeted Worker for employment on the Project, hours for which a Subcontractor employs that Targeted Worker on other projects may contribute to satisfaction of the 6,000 hour requirement, at a rate of one hour credit for each two hours worked on other projects.
2. If the Town establishes an arrangement with a Registered Apprenticeship Program under which the Registered Apprenticeship Program will accept graduates from a Designated Direct Entry Program who are referred by the First Source Referral System, then in satisfying the provisions of Section IV.A.1 or

IV.B.1, Subcontractors working in that Registered Apprenticeship Program's trade shall request that the First Source Referral System and the Registered Apprenticeship Program refer graduates of a Designated Direct Entry Program prior to referring any other Targeted Workers, and shall prioritize hiring and retention of such graduates. The Town shall inform the Master Developer and Prime Contractor of any Registered Apprenticeship Programs for which the Town has established such an arrangement.

B. Major Subcontractors. Master Developer and the Prime Contractor shall make good faith efforts to cause each Major Subcontractor to achieve the hiring goals described in the following paragraphs:

1. Major Subcontractor shall: (i) hire the number of Targeted Workers described in paragraph 2 of this Section IV.B and (ii) employ such Targeted Workers for at least an aggregate minimum hour threshold of ten percent (10%) of the aggregate hours estimated by such Major Subcontractor in its bid for the scope of work to be performed by it in connection with the construction of a Building. If any Targeted Worker is no longer employed by a Major Subcontractor prior to the Major Subcontractor achieving such minimum hours of employment, such Major Subcontractor shall employ another Targeted Worker pursuant to this paragraph for any additional hours necessary to achieve the minimum hour threshold.
2. The Major Subcontractor shall hire one (1) Targeted Worker for each 5,000 hours estimated by such Major Subcontractor in its bid for the scope of work to be performed by it in connection with the construction of a Building (*e.g.*, if the hours estimated are at least 5,000 but not more than 9,999, the Major Subcontractor shall hire one Targeted Worker; if the hours estimated are at least 10,000 but not more than 14,999, the Major Subcontractor shall hire two Targeted Workers; etc.).

C. Satisfaction of Requirements by Other Subcontractors. If Master Developer or the Prime Contractor determines that it is not practicable for one or more Major Subcontractors to comply with the requirements of Section IV.B, Master Developer or the Prime Contractor may elect to require any other Subcontractor or Subcontractors (who may or may not be a Major Subcontractor) hire one or more Targeted Workers (in excess of any requirement imposed upon such other Subcontractor pursuant to Section IV.B), in which event the Targeted Workers hired by such Subcontractor(s) and the hours worked by them may be allocated by Master Developer or the Prime Contractor to a Major Subcontractor for purposes of determining compliance by the Major Subcontractor with the requirements of Section IV.B.

V. **Miscellaneous.**

A. **Hiring Discretion and Procedure.**

1. **Hiring Discretion.** This Program does not limit a Subcontractor's ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Program shall be interpreted so as to require a Subcontractor to employ any worker not qualified for the position in question, nor to employ any particular worker, nor to retain a worker who fails to perform, including but not limited to sub-par attendance.
2. **Initial Hiring Procedure.** Prior to the commencement of any construction work on a Building by a Designated Subcontractor, the following procedure shall be followed by the Prime Contractor, Designated Subcontractor and the Town with respect to the sponsoring/hiring of apprentices/workers referred by the First Source Referral System:
 - (i) At least thirty (30) days prior the date of the commencement of Project work by the Designated Subcontractor, the Prime Contractor or such Designated Subcontractor shall give the Town and all Designated Direct Entry Programs and Designated Construction Training Programs (theretofore identified by the Town in writing to the Prime Contractor), written notice of the number of apprentices/workers required to be sponsored/hired by the Designated Subcontractor pursuant to this Program, specifying the general skills and qualifications that will be required of such apprentices/workers (the "Initial Hiring Notice").
 - (ii) Within ten (10) business days after receipt of the Initial Hiring Notice, the Town and Designated Direct Entry Programs and Designated Construction Training Programs may deliver to the Prime Contractor and the Designated Subcontractor a written list, including contact information, of all individual graduates (including individuals who are anticipated to graduate prior to the Hiring Date described below) of a Designated Direct Entry Program or Designated Construction Training Program, as applicable, that were trained in the general skills and responsibilities described in the Initial Hiring Notice (the "Initial Graduate List"). Each graduate included on the Initial Graduate List to be eligible for employment by the Designated Subcontractor is required to be available for an in-person interview by the Designated Subcontractor within three (3)

business days after the Designated Subcontractor requests an interview.

- (iii) Prior to the date that the Designated Subcontractor hires all of its workers for the construction of a Building (the “Hiring Date”), which shall be no later than five (5) days prior to the date of the commencement of such construction work by the Designated Subcontractor, the Designated Subcontractor shall conduct in-person interviews of eligible graduates listed on the Initial Graduate List, until the Designated Subcontractor sponsors/hires the number of apprentices/workers required pursuant to this Program.

3. **Hiring Procedure during Construction.** After the commencement of construction work on a Building by a Designated Subcontractor, the following procedure shall be followed by the Prime Contractor, Designated Subcontractor, and the Town whenever additional workers are needed, at any time in which the Prime Contractor or Designated Subcontractor has not satisfied the requirements of Section IV.A. or IV.B:

- (i) The Prime Contractor or such Designated Subcontractor shall give the Town and all Designated Direct Entry Programs and Designated Construction Training Programs (theretofore identified by the Town in writing to the Prime Contractor), written notice of the need to sponsor/hire a replacement apprentice/worker pursuant to this Program specifying the general skills and qualifications that will be required of such apprentice/worker (the “Replacement Hiring Notice”).
- (ii) Within three (3) business days after receipt of the Replacement Hiring Notice, the Town and Designated Direct Entry Programs and Designated Construction Training Programs may deliver to the Prime Contractor and the Designated Subcontractor a written list, including contact information, of all individual graduates of a Designated Direct Entry Program or Designated Construction Training Program, as applicable, that were trained in the general skills and responsibilities described in the Replacement Hiring Notice (the “Replacement Graduate List”). Each graduate included on the Replacement Graduate List to be eligible for employment by the Designated Subcontractor is required to be available for an in-person interview by the Designated Subcontractor within three (3) business days after the Designated Subcontractor requests an interview.

- (iii) After receipt of the Replacement Graduate List, the Designated Subcontractor shall conduct in-person interviews of eligible graduates listed on the Replacement Graduate List, until the Designated Subcontractor sponsors/hires the number of apprentices/workers required pursuant to this Program.

4. **Exemptions.** If a Designated Subcontractor complies with the hiring procedure described in paragraphs 2 and 3 of this Section V.A and its compliance with the requirements of Section IV is frustrated because: (i) the Town and Designated Direct Entry Programs and Designated Construction Training Programs fail to deliver a written list of graduates within the time and in accordance with the requirements of paragraphs 2(ii) or 3(ii), as applicable, (ii) after conducting the in-person interviews of eligible graduates as required pursuant to paragraph 2(iii) or 3(iii) above, as applicable, the Designated Subcontractor was unable to sponsor/hire any, or an insufficient number of, graduates because they did not possess the general skills and qualifications described in the Initial Hiring Notice or the Replacement Hiring Notice, or (iii) the graduates refused to agree to the terms and conditions of employment offered by the Designated Subcontractor, which shall be no less favorable than the terms and conditions of employment provided to workers with comparable skills employed by the Designated Subcontractor, then the Designated Subcontractor shall be exempted from the obligation to hire the number of graduates required of it by the Prime Contractor pursuant to Section IV to the extent that it is so frustrated and the minimum threshold hours required for the Designated Subcontractor shall be proportionately reduced (e.g., if the Designated Subcontractor is required to sponsor/hire 3 graduates and only 1 graduate who possesses the required general skills and qualifications is sponsored/hired, then the Designated Subcontractor shall be exempted from the obligation to comply with the requirements of Section IV with respect to 2 graduates and the minimum threshold hours shall be reduced by 66.67%). Reduction of minimum threshold hours for a particular Designated Subcontractor pursuant to this Section shall not reduce the Master Developer's overall Project-wide Hiring Commitment set forth in Section IV.A.

B. Implementation Through Relevant Contracts.

1. **Development Agreement.** The obligations of the Master Developer under this Program are hereby incorporated into and made a part of the master development agreement and lease agreements between the Master Developer and the Town, as material terms, with respect to the Project.
2. **Prime Contracts.** The Master Developer shall, in any contract retaining a Prime Contractor for the Project, incorporate the obligations of the Prime Contractor under this Program as a

material term, binding on the Prime Contractor, and enforceable by the Town as an intended third-party beneficiary.

3. **Subcontracts.** Each Prime Contractor shall in any contract retaining a Major Subcontractor, and each Major Subcontractor shall in any contract retaining a lower-tier Subcontractor, to perform Project construction work, incorporate the obligations of the Major Subcontractor under this Program as a material term, binding on the Major Subcontractor and lower-tier Subcontractor to the extent applicable according to terms of this Program, and directly enforceable to that extent by the Town as an intended third-party beneficiary.
4. **Labor Peace Agreements.** The Master Developer shall ensure that the requirements of this Program shall be incorporated into any project labor agreement, project stabilization agreement or other agreement that Master Developer or Prime Contractor may enter into with one or more labor unions affecting terms and conditions or construction hiring and employment for the Project (“labor peace agreement”). Terms of this Program shall govern over any conflicting terms of any such agreement. In order to facilitate contractor compliance with this Program, labor unions entering into labor peace agreements agree to prioritize referrals of graduates of Designated Direct Entry Programs and Designated Construction Training Programs. The Town is an intended third-party beneficiary of, and may directly enforce, any provision of such labor peace agreement related to implementation of this Program, including provisions related to direct entry agreements and referrals and employment of graduates of Designated Direct Entry Programs and Designated Construction Training Programs.

C. **Reporting.**

1. **Master Developer.** In order to facilitate the determination of each Major Subcontractor (and the minimum threshold hours for each Major Subcontractor for purposes of the requirements of Section IV.B), Master Developer shall report to the Town after receipt of bids from Subcontractors for construction work to be performed on a Building, the hours of labor estimated by each Subcontractor for the scope of work to be performed by the Subcontractor in connection with the construction of a Building. Master Developer shall identify in such report those Subcontractors that constitute Major Subcontractors and the minimum threshold hours of labor for each Major Subcontractor to be performed by individuals referred by the First Source Referral System for purposes of the requirements of Section IV.B. Master Developer shall require the

Prime Contractor to require each Subcontractor to provide such estimated hours of labor at the time of submission of its bid.

2. **Prime Contractor and Designated Subcontractor.** The Prime Contractor and each Designated Subcontractor shall provide to the Town the following information:

- (i) payroll records indicating Targeted Workers' hours employed in satisfaction of Sections IV.A.1 and IV.B;
- (ii) any labor peace agreements or collective bargaining agreements covering Project construction work;
- (iii) within thirty (30) days of written request by the Town, additional written information deemed by the Town to be reasonably necessary to determine compliance with this Program: provided, however, under no circumstances shall Prime Contractor or a Designated Subcontractor be required to provide detailed payroll records of work performed by workers who are not Targeted Workers.

D. **Contributions to Job Training Programs.** If, upon the completion of construction of the Project, the requirements of Section IV.A.1 have not been met, the Master Developer shall make contributions to one or more job training programs designated by the Town, in aggregate amounts as follows:

1. If Section IV.A.1's 6,000-hour requirement has not been satisfied, \$20 per hour short of the requirement;
2. If Section IV.A.1's requirement to hire six (6) Targeted Workers has not been satisfied, \$1000 per hire short of the requirement.

Master Developer shall not be required to make such contributions if the First Source Referral System has not during the course of Project construction referred to Master Developer, Prime Contractor, or Subcontractors at least six (6) Targeted Workers.

E. **Representations.** The Master Developer and each Prime Contractor and Major Subcontractor acknowledge that (i) they have had the opportunity to consult counsel in regard to terms of this Program; (ii) they have read and understand this Program and can and agree to comply with it; and (iii) they are agreeing to comply with this Program freely and voluntarily, under terms of a voluntary contractual agreement containing valuable consideration and incorporating this Program as a material term.

F. **Conflicting Agreements.** In case of conflict between terms of this Program and a contractual agreement entered into by any party that agrees to comply with this Program, the terms of this Program shall govern. Each

party to a contract incorporating this Program agrees through that contract that either it is not a party to such a conflicting agreement, or that it will comply with terms of this Program as incorporated into the contract, rather than with any conflicting agreement.

- G. **Intended Beneficiaries.** The Master Developer, each Prime Contractor, and each Major Subcontractor agree as a condition of participation on the Project that the Town is an intended beneficiary of contracts incorporating this Program, and shall have third party beneficiary rights under all such contracts. Such third party beneficiary rights shall be limited to the right to enforce the requirements of this Program.
- H. **Severability.** If any provision of this Program or any application thereof to any person or circumstances is held invalid by final judgment of any court of competent jurisdiction, such invalidity shall not affect other provisions or application of this Program that can be given effect without the invalid provision or application, and to this end the provisions of this Program are declared to be severable.
- I. **Compliance with Law.** The provisions of this Program shall not be applicable where prohibited by Presidential Executive Order, Court Order, Federal or State law, or where the application would violate or be inconsistent with the terms and condition of a grant or a contract with the agency of the United States, State of New York, or the instruction of an authorized representative of any of these agencies as a condition of receipt of public funds.

EXHIBIT X

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20____, is between the TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 47 West Main Street, Babylon, New York 11702 (the “**Agency**”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the “**Tenant**”). Capitalized terms used herein without definition shall have the meanings ascribed to them in the Lease Agreement described below.

R E C I T A L S

WHEREAS, the Agency was created by the Enabling Act, as amended, and Chapter 177 of the Laws of 1973 of the State, as amended (collectively, the “**Act**”); and

WHEREAS, the Agency has agreed to assist in the acquisition, construction, furnishing and equipping by the Company of an approximately 243,465 square foot, multi-family residential rental housing facility, including 8,674 square feet of community facility space located on that certain approximately 3.223 acre parcel of land located at 300 Long Island Avenue, Wyandanch, New York 11798 constituting a commercial facility under the Act (the “**Land**”), and the acquisition and installation of certain equipment, furnishings and personal property therefor (the “**Facility Equipment**”), all for use as an approximately 218-unit multi-family rental housing facility with a 100% affordability component (the Land, Improvements, including construction, renovation and reconstruction thereof, and the Facility Equipment, collectively the “**Facility**”); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, pursuant to the Company Lease Agreement, dated as of June 29, 2023 (the “**Company Lease**”), by and between the Company, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency subleased the Facility to the Company pursuant to the Lease and Project Agreement (the “**Lease Agreement**”), dated as of the date as the Company Lease, by and between the Agency, as sublessor, and the Company, as sublessee; and

WHEREAS, the Company intends to further sublease [a portion of] the Facility to the Tenant to be used as _____ pursuant to a [Tenant Lease Agreement], dated as of _____, 20____ (the “**Tenant Lease Agreement**”), by and between the Company and the Tenant, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

Section 1.1 Representations and Covenants of Tenant. The Tenant makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ [*and authorized to transact business in the State of New York*], and in good standing under the laws of the State of New York,[and the State of [____]] and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Facility and the design, acquisition, construction, renovation, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) Under penalty of perjury, the Tenant certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE II
INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, including during the Construction Period, if any, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

EXHIBIT X-2

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than the greater of \$2,000,000 or the amount as may be required by any Lender. During any Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or the Tenant is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or the Tenant who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, the Tenant, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$2,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Tenant against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any Construction Period.

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

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability

Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$2,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

- (iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$2,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).
- (iv) Excess “umbrella” liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 2.1(a) and (e) hereof shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days’ prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1(d)(ii) and (iv) shall name the Agency and the Tenant as additional insureds.

(b) The certificates of insurance required by Section 2.1(a), (c), and (e) hereof shall be deposited with the Agency on or before the date hereof. A copy of the certificates of insurance required by Section 2.1(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Tenant shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a

term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Tenant Lease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful rate.

ARTICLE III SPECIAL COVENANTS

Section 3.1 No Warranty of Condition or Suitability by Agency. 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 TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT 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.

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or to common areas or other portions of the Facility to which the Tenant has regular access (such areas, together with the Facility, are hereinafter referred to as the “**Tenant Premises**”), or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency’s participation in the subleasing of the Facility to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys’ fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

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

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Facility.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Tenant will in no event use the Facility in such a way as to cause or permit the Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Facility has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Facility which is occupying the Facility by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or the Facility, or to the acquisition, construction, renovation and/or equipping of the Facility, or to any use, manner of use or condition of the Facility or any part of the Facility, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Facility to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and

complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Tenant that, by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. Annually, the Tenant shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained.¹ The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any other information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, or any of the Agency Documents or Tenant Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.8 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Facility is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or

¹Cannot be removed or modified; required by GML Section 859-a(6)(b).

(ii) that such occupation of the Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

(b) The Tenant may not assign the Tenant Lease Agreement or sub-sublease the Facility without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Lease Agreement.

Section 3.10 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF BABYLON INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

SCHEDULE A

SCHEDULE OF DEFINITIONS

“Abatement Commencement Date” has the meaning set forth in Exhibit C, it being acknowledged that the Abatement Commencement Date may be postponed due to a “force majeure” event, as such term is defined in Section 10.1(b).

“Abatement Termination Date” means February 28, 2057, or such earlier date on which the Lease Agreement is terminated in accordance with the provisions thereof, on which date the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2(c) of the Lease Agreement.

“Act” has the meaning set forth in the recitals hereto.

“Affiliate” means a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including 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.

“Affordable Housing Income Levels” means that the annual household income of prospective tenants shall as follows: (a) forty-four (44) of the apartment units will be occupied by tenants whose incomes do not exceed thirty percent (30%) of Area Median Income, (b) thirty (30) of the apartment units will be occupied by tenants whose incomes do not exceed fifty percent (50%) of Area Median Income, (c) seventy-four (74) of the apartment units will be occupied by tenants whose incomes do not exceed sixty percent (60%) of Area Median Income, and (d) sixty-nine (69) of the apartment units will be occupied by tenants whose incomes do not exceed seventy percent (70%) of Area Median Income. Upon recertification, the maximum allowable income shall not exceed the percentage of the Area Median Income permitted under the Regulatory Agreement with the HFA entered into by the Company in accordance with the provisions of Section 42 of the Code.

“Affordable Housing Pricing Levels” shall mean the following pricing calculations shall be deemed acceptable affordable housing pricing levels: In projects where the units are for rental, the monthly rental price for a unit shall be no greater than thirty (30%) percent of the maximum percentage of Area Median Income, adjusted for family size, permitted for the applicable unit in effect at the time of the execution of the lease agreement, reduced by the monthly utility allowance in effect at the time the execution of the lease agreement.

“Affordable Housing Project” shall mean a project with 100% of all residential rental units being made available to prospective tenants, and satisfying Affordable Housing Income Levels and Affordable Housing Pricing Levels.

“Agency” means (i) the Town of Babylon Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Documents” means the Company Lease, the Lease Agreement, and any Tenant Agency Compliance Agreement.

“Agent” has the meaning set forth in Section 5.2(d).

“Area Median Income” means the median income for Nassau-Suffolk, NY HUD Metro FMR Area as determined by the U.S. Department of Housing and Urban Development (HUD).

“Authorizing Resolution” means the resolution adopted by the Agency on February 15, 2023, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; in the case of the Company, the manager and such additional persons as, at the time, are designated to act on behalf of the Company.

“Bank” means JPMorgan Chase Bank, N.A., as letter of credit provider.

“Bill of Sale” means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Facility Equipment, as the same may be amended from time to time.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York, or any city in which the principal office of the Lender, if any, is located are authorized by law or executive order to remain closed.

“Certificate of Occupancy” means the final and permanent Certificate of Occupancy issued by the Town of Babylon permitting the use and occupancy of the Facility.

“Closing Date” means the date set forth on the cover page hereto.

“Code” has the meaning set forth in Section 8.9.

“Company” means WR Communities - L, LLC, a New York limited liability company, and its successors and assigns.

“Company Documents” means the Bill of Sale, the Company Lease, the Lease Agreement and the Mortgage.

“Company Lease” means the Company Lease Agreement, dated as of the Closing Date, by and between the Company, as sublessor, and the Agency, as sublessee, as the same may be amended from time to time.

“Company Sales Tax Savings” means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent on behalf of the Company, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“Completion Date” is defined in Section 2.2(o) of the Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date.

“Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.)

“Eligible Items” means the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (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; (ii) purchases or leases of any item of materials, goods, machinery, equipment, appliances, 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 (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.

“Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership,

construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

“Event of Default” means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

“Facility” has the meaning set forth in the recitals hereto.

“Facility Equipment” has the meaning set forth in the recitals hereto.

“Facility Realty” means, collectively, the Land and the Improvements.

“Form ST-60” means 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.

“Form ST-123” means 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 for Sales and Use Taxes with respect to industrial development agency transactions.

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

“FTE” means full time equivalent employee(s), calculated on the basis of one individual employed for thirty-five (35) hours per week or two individuals on the payroll working at least twenty (20) hours per week (subject to customary vacation, holiday and sick leave) who are employees of the Company or any Affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any Affiliates of the Company, whose place of employment or workplace is located at the Facility, and who receive customary benefits.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“HFA” means the New York State Housing Finance Agency.

“Improvements” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, and (ii) not part of the Facility Equipment.

“Independent Accountant” means an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency or the Company.

“Ineligible Items” means the following items of personal property and services with respect to which the Company and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (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) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

“Investor” means collectively, PNC LIHTC Fund 84, LLC, a Delaware limited liability company, PNC LIHTC Fund 86, LLC, a Delaware limited liability company, PNC LIHTC Fund 87, LLC, a Delaware limited liability company, Columbia Housing SLP Corporation, an Oregon corporation, and each of their respective successors and/or assigns.

“Land” has the meaning set forth in the recitals hereto and as more particularly described in Exhibit A.

“Lease Agreement” means the Lease and Project Agreement to which this Schedule A is attached, as the same may be amended from time to time.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 4.2 of the Lease Agreement.

“Lender” means HFA and its successors and assigns as holder of the Mortgage.

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

“Loan” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Loan Documents” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Maximum Company Sales Tax Savings Amount” means the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall not exceed \$2,835,334.00, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“Mortgage” means any mortgage and security agreement granted by the Company or the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender’s Loan to the Company.

“Mortgagee” means the mortgagee under any Mortgage, and its successors and/or assigns.

“Mortgage Recording Tax Exemption” has the meaning ascribed to such term in Section 5.3 of the Lease Agreement.

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

“NYSDTF” means the New York State Department of Taxation and Finance.

“Operating Agreement” has the meaning ascribed to such term in Section 8.3 of the Lease Agreement.

“Organizational Documents” means (i) in the case of an entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such entity, and any amendments thereto, (ii) in the case of an entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such entity, and (iii) in the case of an entity constituting a general or limited partnership, the partnership agreement of such entity.

“Permitted Encumbrances” means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, (ii) the Company Lease, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (v) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vi) Liens for taxes not yet delinquent, (vii) any Mortgage granted to a Lender, (viii) purchase money security interests and blanket liens and (ix) the regulatory agreement with the HFA.

“Permitted Mortgagee Transferee” means the Bank, the State of New York Mortgage Agency or any Mortgagee or any affiliated entity wholly controlled by the Bank, the State of New York Mortgage Agency or any Mortgagee, which parties the Agency hereby approves as Transferees.

“Permitted Tenant(s)” means a tenant of a residential apartment at the Facility.

“Person” or “Persons” means an individual, partnership, limited liability partnership, limited liability company, corporation, trust or unincorporated organization, or a government agency, political subdivision or branch thereof.

“PILOT Payments” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Plans and Specifications” means the plans and specifications, if any, for the Improvements, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the Lease Agreement, including any plans and specifications submitted to the Town or any agency thereof with respect to the approval of the Project.

“Prohibited Person” means:

(a) any Person (i) that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the Town or the Agency, or (ii) that directly or indirectly controls, 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;

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

(c) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but

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

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

“Project” has the meaning set forth in the recitals hereto.

“Project Application Information” means the application and questionnaire submitted to the Agency on April 20, 2022, as supplemented, by or on behalf of the Company, for approval by the Agency of the Project, together with all other letters, documentation, reports and financial information submitted in connection therewith.

“Project Budget” means the budget for the Project as set forth in Exhibit F.

“Project Work” means the work required to complete the Project.

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

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

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

“Real Property Tax Abatements” means the real property tax abatements granted pursuant to Section 5.1 of the Lease Agreement.

“Recaptured Benefits” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recapture Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Release” has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

“Sales Tax Agent Authorization Letter” means the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit D to the Lease Agreement – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2(d) of the Lease Agreement.

“Sales Tax Exemption” means an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“Sales Tax Registry” means the Sales Tax Registry in the form set forth in Exhibit E.

“Sales and Use Taxes” means local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

“Schedule of Definitions” means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

“Special Provisions” has the meaning ascribed to such term in Section 5.2 of the Lease Agreement.

“State” means the State of New York.

“State Sales and Use Taxes” means sales and compensating use taxes and fees imposed by Article 28 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” means all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Facility.

“Taxable Status Date” means March 1 of any year.

“Taxing Jurisdiction” has the meaning ascribed to such term in the Act.

“Tenant Agency Compliance Agreement” means any Tenant Agency Compliance Agreement by and between the Agency and a subtenant of the Facility, in the form of Exhibit X, as the same may be amended from time to time.

“Title Report” means Certificate of Title No. 3020-1145127 issued by First American Title Insurance Company, effective as of August 10, 2022, as amended.

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

“Transaction Counsel” means the law firm of Katten Muchin Rosenman LLP.

“Transaction Documents” means the Agency Documents and the Company Documents.

“Unassigned Rights” means the rights of the Agency to enforce the provisions of and the rights to payment of moneys payable pursuant to and under Sections 3.4, 3.5, 3.6, 3.8, 4.3, 4.4, 4.5, 5.1, 5.2, 5.3, 5.4, 6.4(c) and (d), 6.5, 6.7, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.10, 8.11, 9.2, 9.3, 10.1, 10.2, 10.4, 10.6, 11.2, 11.3, 12.2, 13.1, 13.2, 13.3, 14.1, 14.4, 14.7, 14.9 and 14.11 and Article XIII of the Lease Agreement.