

**Execution Copy**

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

ENCON INDUSTRIES CORP.

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EQUIPMENT LEASE AND PROJECT AGREEMENT

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Dated as of June 14, 2023

Town of Babylon Industrial Development Agency  
(Encon Industries Corp. Equipment Project)

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THIS EQUIPMENT LEASE AND PROJECT AGREEMENT (this “**Lease Agreement**”), dated as of June 14, 2023 (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**”), and ENCON INDUSTRIES CORP., a corporation formed and existing under the laws of the State of New York, having its principal office at 173 School Street, Third Floor, Westbury, New York 11590 (the “**Company**”).

#### RECITALS

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

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the Public Purposes of the State; 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 improvement, and all 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 shall be suitable for manufacturing, warehousing, research, commercial, recreation 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 (the “**Town**”) and the inhabitants thereof; and

WHEREAS, the Company has entered into a tax-exempt financing lease, dated the Closing Date (the “**Lease and Sublease Agreement**”), among the Company, as sublessee, the Town of Babylon L.D. Corporation II, a New York local development corporation with an address at 816 Deer Park Avenue, North Babylon, New York 11703, as lessee, and Flagstar Public Funding Corp., as lessor (the “**Lessor**”), in the original principal amount of \$13,500,000 for the purposes of financing of the Equipment Project (defined below); and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company for the undertaking of a “project” within the meaning of the Act (the “**Equipment Project**”) consisting of the acquisition of a fleet of new solid waste and recycling collection vehicles and support equipment (as more particularly described in Exhibit A attached hereto) (the “**Facility Equipment**”), to be stored at a building or parking lot located at 38-42 Wyandanch Avenue, Wyandanch, in the Town of Babylon, all for use by the Company in its business of providing residential municipal solid waste collection and delivery services to the Town pursuant to a Residential Solid Waste and Recyclables Collection Service Agreement

dated as of October 1, 2012, as amended, between the Company and the Town (the “**Service Agreement**”); and

WHEREAS, the Equipment Project is reasonably necessary in order to provide residential municipal solid waste collection, recycling and delivery services in the Town pursuant to the Service Agreement, and it is beneficial for the Town and the Company that the Agency assist the Company by taking a leasehold title to or undertaking control of the Facility Equipment so as to afford the Company of certain relief from Sales and Use Taxes with respect to the Facility Equipment; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to complete the Equipment Project Work; and

WHEREAS, the Company subleased the Facility Equipment to the Agency pursuant to a certain Facility Equipment Sublease Agreement, dated as of the Closing Date (the “**Facility Sublease Agreement**”); and

WHEREAS, the Agency has agreed to further sublease the Facility Equipment to the Company, and the Company desires to sublease the Facility Equipment from the Agency, upon the terms and conditions set forth in this Lease Agreement.

## 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 leasehold interest in the Facility Equipment pursuant to the Facility Sublease Agreement on the date hereof, cause the Equipment Project Work to be undertaken by the Company in accordance with the provisions hereof and will lease the Facility

Equipment to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, 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 commitment of the Company to undertake the Equipment Project Work and utilize the Facility Equipment 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 which 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 covenants 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 corporation, 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, is qualified to do business and 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 Equipment, and the operation and use thereof will comply with all applicable laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility Equipment. 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 constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

(e) The Equipment Project 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 Equipment Project not to constitute a "project" as such quoted term is defined in the Act.

(f) [Intentionally Omitted]

(g) [Intentionally Omitted]

(h) The Facility Equipment shall be utilized solely by the Company in accordance with the Company's obligations under the Service Agreement.

(i) The Company will comply with all of its obligations under the Service Agreement.

(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 which 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 statements not misleading.



- (m) The Company is not a Prohibited Person.

ARTICLE III  
CONVEYANCE OF FACILITY SITE; EQUIPMENT 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 valid and enforceable leasehold interest in the Facility Equipment, and will convey or cause to be conveyed to the Agency for further sublease to the Company valid and enforceable leasehold interest in the Facility Equipment acquired after the date hereof, in each case except for Permitted Encumbrances.

Section 3.2 [Intentionally Omitted]

Section 3.3 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility Equipment 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 Equipment and the leasehold interests therein are securing the financial obligations of the Company. The Facility Equipment 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 Equipment and complete the Equipment Project Work on behalf of the Agency and the Company’s obligation to indemnify and hold harmless the Agency.

Section 3.4 Equipment Project Work.

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

(b) [Intentionally Omitted]

(c) Leasehold title to all Facility Equipment shall vest in the Agency immediately upon the Company’s obtaining an interest in or to the Facility Equipment. The Company shall execute, deliver and record or file all instruments necessary or appropriate so as to vest such leasehold title in the Agency and shall take all action necessary or appropriate to protect such leasehold 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.

Section 3.5 Identification of Facility Equipment. All Facility Equipment for which the Agency has a leasehold interest pursuant to the provisions of this Lease Agreement shall be properly identified by the Company evidencing such leasehold interest as may be approved by the Agency.

Section 3.6 Certificates of Completion. To establish 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 Equipment Project Work has been completed in accordance

with the Project Budget therefor, and (b) that payment for all costs of such Equipment 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, final certificates of title. The Company agrees to complete the Equipment Project Work by December 31, 2024.

Section 3.7 Remedies to Be Pursued Against Suppliers, Vendors and Their Sureties. In the event of a default by any supplier, vendor or other Person under any contract made by it in connection with the Facility Equipment 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 supplier, vendor 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 supplier, vendor, surety or other Person which 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 supplier, vendor or other person shall be paid to the Company.

#### ARTICLE IV LEASE OF FACILITY RENTAL PROVISIONS

Section 4.1 Sublease of Facility Equipment. The Agency hereby further subleases the Facility Equipment (as more particularly described in Exhibit A attached hereto) to the Company and the Company hereby subleases the Facility Equipment 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 Equipment (subject to Sections 8.1, 8.3, 9.3 and 10.2 hereof), and the leasehold title created hereby shall commence, and the Company shall accept possession of the Facility Equipment, on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the term of the leasehold title created hereby (the "**Lease Term**") shall terminate December 31, 2024.

(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 Equipment 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 Equipment as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility Equipment as follows: One Dollar (\$1.00) on the Closing Date.

(b) In addition to the payments of basic rent, 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 expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership, leasing, subleasing, or financing of the Facility Equipment, 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.

(c) 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(b), 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 EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE FACILITY EQUIPMENT, OR THE SUITABILITY OF THE FACILITY EQUIPMENT 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 EQUIPMENT 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 EQUIPMENT 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 EQUIPMENT 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  
SALES TAX EXEMPTION AND RECAPTURE OF BENEFITS

Section 5.1 Sales Tax Exemption.

(a) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, to (i) complete the Equipment Project Work, (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper for the Equipment 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 Equipment Project Work, (iv) ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Equipment Project Work, and (v) enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(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 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 Equipment for the purpose of effecting purchases of Facility Equipment so that such purchases 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 pursuant to this Lease Agreement 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 Completion Date, (B) the termination of this Lease Agreement, (C) failure of the Company to file Form ST-340, as described in Section 5.1(f) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received in the aggregate with respect to the Equipment Project, 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 Facility Equipment which shall be purchased for use only by the Company (and not with any intention to sell, transfer or otherwise dispose of any such Facility Equipment 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 Facility Equipment unless such item is used solely by the Company.

(v) The Sales Tax Exemption shall not be used for any item other than Facility Equipment.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity other than the Company, 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 is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company shall cease being an agent of the Agency.

(ix) The Company agrees that the aggregate amount of Company Sales Tax Savings realized by the Company in connection with the Facility Equipment shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. The Company may not tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY 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 TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will present to each seller or vendor a completed and signed Form ST-123, a form of which is attached hereto as Exhibit Z-1, for each contract, agreement, invoice, bill or purchase order entered into by the Company, as agent for the Agency, for the Equipment Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility Equipment on each bill or invoice for purchases and indicate on the bill or invoice that the Agency 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.

(f) 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, a form of which is attached hereto as Exhibit Z-2, 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 in connection with the Facility Equipment. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be an agent of the Agency in connection with the Facility Equipment without any further action of the Agency.

(g) 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 B, which accounts for all Company Sales Tax Savings realized by the Company 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 during the period from the preceding January 1st to the Termination Date.

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

(i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, 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 or any other person or entity acting on behalf of the Company 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 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 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.

(i) Subject to the provisions of subsection (h) above, in the event that the Company shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement, 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 equal to 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.

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times during regular business hours to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company with respect to the Equipment Project, 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 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 5.1.

Section 5.2 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 Facility Equipment and to accomplish the Public Purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(a) If there shall occur a Recapture Event at any time after the date hereof, 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, the following amounts:

(i) one hundred percent (100%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs within the second (2nd) anniversary of the date hereof;

(ii) fifty percent (50%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs after the second (2nd) anniversary but prior to the fourth (4th) anniversary of the date hereof;

(iii) twenty-five percent (25%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs on or after the fourth (4th) anniversary but prior to the sixth (6th) anniversary of the date hereof;

(iv) zero percent (0%) of the Recaptured Benefits (as defined below) if the Recapture Event occurs on or after the sixth (6th) anniversary of the of the date hereof.

(b) The term “**Recaptured Benefits**” shall mean one hundred percent (100%) of the Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by the Company or any Affiliates of the Company pursuant to this Lease Agreement (the “**Company Sales Tax Savings**”); and which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term “**Recapture Event**” shall mean any of the following events:

- (1) a material violation of the terms and conditions of this Lease Agreement and other Transaction Documents;
- (2) a material misrepresentation made by the Company and contained in the application for Financial Assistance, or in this Lease Agreement or any Transaction Documents or any other materials delivered by the Company pursuant to the Transaction Documents;
- (3) the Company and/or Affiliates of the Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility Equipment without the prior written consent of the Agency;
- (4) the failure by the Company to utilize the Facility Equipment in accordance with the Service Agreement;
- (5) the occurrence and continuance of an Event of Default under the Service Agreement or the Lease and Sublease Agreement;
- (6) the Company receives Company Sales Tax Savings in connection with the Equipment Project in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Company Sales Tax Savings only. It is further provided that failure to repay the Company Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), (ii) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), a taking or condemnation by



governmental authority of all or substantially all of the Facility Equipment, or (iii) the inability or failure at law of the Company after the Facility Equipment shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to repair or replace the Facility Equipment to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith through no fault on the part of the Company or any Affiliates of the Company.

(e) The Company covenants and agrees to furnish the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(f) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand 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, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(g) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.2, from amounts received by the Agency pursuant to this Section 5.2.

The obligations of the Company under this Section 5.2 shall survive the termination or expiration of this Lease Agreement for any reason whatsoever. 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 Equipment by Company.

(a) The Company shall not abandon, unless damaged beyond repair, the Facility Equipment or cause any material waste thereto. During the Lease Term, the Company shall not remove any of the Facility Equipment outside of the jurisdiction of the Agency, other than any Facility Equipment damaged beyond repair, and shall (i) keep the Facility Equipment or cause the Facility Equipment to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility Equipment; and (iii) cause the Facility Equipment to be operated in a sound manner by trained employees.

Section 6.2 [Intentionally Omitted]

Section 6.3 Governmental Charges and Utility Charges.

(a) Subject to the Sales Tax Exemption 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 and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility Equipment; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, upkeep and improvement of the Facility Equipment; 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) The Company may in good faith contest any such taxes, assessments and other charges.

(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, 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 equipment 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) The Company shall, at its own expense, cause casualty, public liability and property damage insurance, for such amounts and against such hazards as the Agency may require, to be carried and maintained with respect to the Facility Equipment sufficient to protect the greater of the full replacement value of the Facility Equipment or the then applicable Prepayment Price (as defined in the Lease and Sublease Agreement) under the Lease and Sublease Agreement and to protect the Agency and the Company from liability in all events. Casualty and public liability coverage shall be in amounts not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate and such insurance shall protect 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. The Company shall also be required to carry and maintain during the Lease Term, 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. All insurance proceeds from casualty losses shall be payable in accordance with the Lease and Sublease Agreement.

(b) Any insurance policy carried or maintained pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to the Company as lender loss payee as its respective interest may appear and naming the Agency as additional insured for liability. The Net Proceeds of the casualty and property damage insurance required in this Section shall be applied in accordance with the Lease and Sublease Agreement. Net Proceeds of the public liability insurance required by this Section shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company shall not either cancel the policy or modify the policy materially and adversely to the interest of the Agency without first giving written notice thereof to the Agency at least 30 days in advance of such cancellation or modification.

#### 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 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. Any public liability policy required by Section 6.4 shall name the Agency as an additional insured. Alternatively and upon prior written approval of the Agency and the Company may insure the Facility Equipment under a blanket insurance policy or policies which cover not only the Facility Equipment but also other properties of the Company.

(b) A copy of the insurance policies required by Section 6.4 hereof shall be deposited with the Agency on or before the Closing Date. 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 in accordance with the Lease and Sublease Agreement.

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, 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 of the Facility Equipment or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility Equipment 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, 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 Equipment.

(a) If the Facility Equipment or any part or component thereof shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace or repair the Facility Equipment;
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, (whether or not the Facility Equipment is replaced or repaired);
- (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 applied in accordance with the Lease and Sublease Agreement; and

(v) if the Facility Equipment is not replaced or repaired, in whole or in part, as provided herein and in Section 7.1(b) hereof, such destroyed or damaged Facility Equipment shall no longer be subject to this Lease Agreement and this Lease Agreement shall be terminated regarding such destroyed or damaged Facility Equipment at the option of the Agency and the provisions of Section 7.1(e) hereof shall apply.

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

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

(ii) the Facility Equipment shall continue to constitute a “project” as such term is defined in the Act.

(c) All such repair or replacement of the Facility Equipment 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 Equipment as if the same were specifically provided herein.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair or replacement, the Company may nonetheless complete such repair or replacement work, or cause such repair or replacement work to be completed 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 or replacements 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 Equipment as if the same were specifically described herein.

(e) If the Company shall not repair or replace the Facility Equipment, it shall be deemed to have exercised its option to terminate this Lease Agreement regarding the destroyed or damaged Facility Equipment pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied in accordance with the Lease and Sublease Agreement.

## Section 7.2 Condemnation.

(a) If title to or use of the Facility Equipment shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to repair or replace the Facility Equipment or to acquire equipment of substantially the same nature as the Facility Equipment (“**Substitute Facility Equipment**”);

- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Facility Equipment is repaired or replaced or Substitute Facility Equipment is acquired);
- (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 applied in accordance with the Lease and Sublease Agreement; and
- (v) if the Facility Equipment is not repaired or replaced, in whole or in part, as provided herein and in Section 7.2(b) hereof, such destroyed or damaged Facility Equipment shall no longer be subject to this Lease Agreement and this Lease Agreement regarding the destroyed or damaged Facility Equipment shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

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

- (i) the Facility Equipment or the Substitute Facility Equipment shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation; and
- (ii) the Facility Equipment or the Substitute Facility Equipment shall continue to constitute a “project” as such term is defined in the Act.

(c) All such repair or replacement of the Facility Equipment shall be effected with due diligence in a good and workmanlike manner in compliance, in all material respects, 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 Equipment as if the same were specifically described herein. Any Net Proceeds of a Condemnation not used to repair or replace the Facility Equipment shall be applied in accordance with the Lease and Sublease Agreement.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair or replacement of the Facility Equipment or acquisition of Substitute Facility Equipment, the Company may nonetheless complete, or cause to be completed, such repair or replacement 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, and such acquisition of Substitute Facility Equipment 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 Equipment as if the same were specifically described herein.

(e) If the Company shall not repair or replace the Facility Equipment or acquire Substitute Facility Equipment, it shall be deemed to have exercised its option to terminate this Lease Agreement regarding the destroyed or damaged Facility Equipment pursuant to Section 11.1 hereof. Any Net Proceeds derived from the Condemnation shall be applied in accordance with the Lease and Sublease Agreement.

## ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Right to Inspect Facility Equipment. The Agency and its duly authorized agents shall have the right at all reasonable times during regular business hours on reasonable notice to inspect the Facility Equipment, including, without limitation, for the purpose of ascertaining the condition of the Facility Equipment. Notwithstanding the foregoing, the Agency shall use reasonable efforts to minimize any disruption or interference with the day to day activities and operations of the Company.

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 Equipment Project or arising by reason of or in connection with the operation or the use thereof or the presence of any Person or Property on, in or about the Facility Equipment, (ii) the Equipment Project, the Equipment Project Work and the Agency’s acquisition, leasing and subleasing of the Facility Equipment, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.1 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 Equipment Project, the Equipment Project Work or the operation or use of the Facility Equipment 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, (iv) 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 or from

the building or parking lot where the Facility Equipment is stored, (v) 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 building or parking lot where the Facility Equipment is stored, required by any Environmental Law, (vi) 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 Equipment or the ownership, use, sale, conveyance or operation thereof in violation of any Environmental Law, (vii) a violation of any applicable Environmental Law, (viii) non-compliance with any Environmental Permit, (ix) 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 (x) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility Equipment or the building or parking lot where the Facility Equipment is stored 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 Equipment, (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 the building or parking lot where the Facility Equipment is stored, or ecological condition of, the Facility Equipment or the building or parking lot where the Facility Equipment is stored, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility Equipment, 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 Facility Equipment or the Company's interests and rights in, to, and under this Lease Agreement or the termination of this 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 officers or owners 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 this 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, (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, except with consent of the Agency, which shall not be unreasonably withheld or delayed and (v) at no time will Anthony E. Core own less than a majority of the ownership interests in the Company, except with the written consent of the Agency, such consent not to be unreasonably withheld, conditioned or delayed by the Agency.

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 Equipment in compliance with Sections 874(8) of the GML as provided in Section 5.1(f) 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 Company's facilities, 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 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 Equipment, or to any use, manner of use or condition of the Facility Equipment, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Facility Equipment, or of any use, manner of use or condition of the Facility Equipment.

(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 Equipment 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.

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, upon the Facility Equipment 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 Equipment 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 sixty (60) days of the filing or perfection thereof.

Section 8.9 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility Equipment and to any investment credit with respect to any part of the Facility Equipment.

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 Equipment Project 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 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.

## ARTICLE IX ASSIGNMENTS AND SUBLEASING

### Section 9.1 Restriction on Sale of Facility Equipment.

(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 Equipment or any part thereof, or any of its rights under this Lease Agreement, without the prior written consent of the Company.

### 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 Equipment and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(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 any amounts payable by it under this Lease Agreement.

### Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility Equipment may not be assigned or subleased, in whole or in part, without the prior written consent of the Agency.

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 all of the Facility Equipment to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility Equipment 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 Equipment 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 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, on the date due, the amounts specified to be paid pursuant to Section 4.3 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), 5.1, 6.3, 6.4, 6.5, 8.2, 8.4, 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 the Recaptured Benefits on the dates due;
  - (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 twenty (120) days or it is waived by the Agency;

(vi) [Reserved];

(vii) [Reserved];

(viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days 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 forty (40) 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;

(ix) the failure by the Company to complete the Project on or before the Completion Date substantially in accordance with the Project Budget; or

(x) the occurrence and continuance of an Event of Default under the Lease and Sublease Agreement or the Service 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 and 6.1 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, 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, 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 due and owing Recaptured Benefits, and (C) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(viii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(ii) terminate this Lease Agreement and the Facility Sublease Agreement, reconvey the Facility Equipment to the Company and terminate the Sales Tax Exemption authorization; 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 this Lease Agreement) shall relieve the Company from its obligation to make all payments required by Section 4.3 hereof or due and owing Recaptured Benefits.

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. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or 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. In the event any agreement contained herein should be 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 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: the purchase price with respect to the Facility Equipment of one dollar (\$1.00);
- (b) To the Agency: all amounts due and payable under Section 5.2 hereof;
- (c) 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
- (d) 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 this 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 to convey the Facility Equipment to the Company, subject in each case only to the following: (A) any Liens to which 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 Equipment.

## ARTICLE XII

[Intentionally Omitted]

## ARTICLE XIII ENVIRONMENTAL MATTERS

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

(a) All Environmental Permits necessary for the Facility Equipment and the ownership, use or operation of the Facility Equipment have been obtained and are in full force and effect.

(b) No event has occurred with respect to the Facility Equipment or the ownership use or operation thereof 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.

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

(a) The Company shall use, operate and manage the Facility Equipment in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators of the Facility Equipment to use and operate the Facility Equipment in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility Equipment 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 and operators of the Facility Equipment 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 use or operation of the Facility Equipment 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, (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 with respect to any Facility Equipment of any past or present Release or the threat of a Release of any Hazardous Substance from the Facility Equipment. 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.

(e) If at any time the Agency obtains any notice or information that the Company or the Facility Equipment, or the use or operation thereof 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 Equipment 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.

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 Equipment or in, to or under this 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  
Attention: Thomas E. Dolan, Chief Executive Officer

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:

Encon Industries Corp.  
173 School Street, Third Floor  
Westbury, New York 11590  
Attention: Anthony E. Core, President

With a copy to:

Ruskin Moscou Faltichuk, PC  
1425 RXR Plaza, East Tower, 15<sup>th</sup> Floor  
Uniondale, NY 11556  
Attention: Michael L. Faltischek, Esq.

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.

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. In the event any provision of this Lease Agreement shall be 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.

Section 14.5 Electronic Execution of Assignments and Certain Other Document. 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 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 acquisition and installation of all of the Facility Equipment, 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 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to the rights of the Lessor under the Lease and Sublease Agreement, the other Lease Documents (as defined in the Lease and Sublease Agreement) and to any and all modifications, amendments, renewals and extensions thereof and no further documentation shall be necessary to evidence such subordination.

Section 14.12 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 Equipment or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

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

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

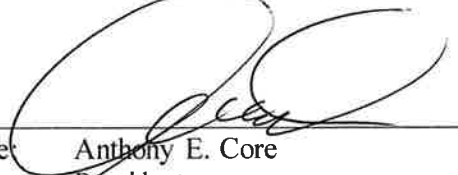
On the 14<sup>th</sup> day of June, 2023, before me, the undersigned, personally appeared **Thomas E. Dolan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the 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.

*David M. Batkiewicz*  
Notary Public

DAVID M BATKIEWICZ  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01BA6422938  
Qualified in Suffolk County  
My Commission Expires: 10/04/2025


My commission expires: 10/04/2025

**ENCON INDUSTRIES CORP.**

By:   
Name: Anthony E. Core  
Title: President

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

On the 14<sup>th</sup> day of June, 2023, before me, the undersigned, personally appeared **Anthony E. Core**, 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 SANDRA L. McGRATH  
NOTARY PUBLIC, State of New York  
No. 01MC4922837  
Qualified in Nassau County  
Commission Expires 3/14/26

My commission expires:

**EXHIBIT A**  
Facility Equipment

Serial Number	VIN	STOCK #	Model Year	Make	Model	Color 1	Color 2	Purchased Date	Purchased from Name	Odometer Reading	Odometer Certificate Condition	Status
1	1CYAADAJXR1001257	23BM36-1	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
2	1CYAADAJ1R1001258	23BM36-2	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
3	1CYAADAJ3R1001259	23BM36-3	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
4	1CYAADAJXR1001260	23BM36-4	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
5	1CYAADAJ1R1001261	23BM36-5	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
6	1CYAADAJ3R1001262	23BM36-6	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
7	1CYAADAJ5R1001263	23BM36-7	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
8	1CYAADAJ7R1001264	23BM36-8	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
9	1CYAADAJ9R1001265	23BM37-1	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
10	1CYAADAJ0R1001266	23BM37-2	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
11	1CYAADAJ2R1001267	23BM37-3	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
12	1CYAADAJ4R1001268	23BM37-4	2024	Crane Carrier	LET2-52	Orange		03-27-2023	BATTLE MOTORS			Draft
13	1CYAADAJ6R1001269	23BM37-5	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
14	1CYAADAJ2R1001270	23BM37-6	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
15	1CYAADAJ4R1001271	23BM37-7	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
16	1CYAADAJ6R1001272	23BM37-8	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
17	1CYAADAJ8R1001273	23BM38-1	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
18	1CYAADAJXR1001274	23BM38-2	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
19	1CYAADAJ1R1001275	23BM38-3	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
20	1CYAADAJ3R1001276	23BM38-4	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
21	1CYAADAJ5R1001277	23BM38-5	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
22	1CYAADAJ7R1001278	23BM38-6	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
23	1CYAADAJ9R1001279	23BM38-7	2024	Crane Carrier	LET2-52	Orange		04-04-2023	BATTLE MOTORS			Draft
24	1CYAADAJ5R1001280	23BM38-8	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
25	1CYAADAJ7R1001281	23BM39-1	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
26	1CYAADAJ9R1001282	23BM39-2	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
27	1CYAADAJ0R1001283	23BM39-3	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
28	1CYAADAJ2R1001284	23BM39-4	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
29	1CYAADAJ4R1001285	23BM39-5	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
30	1CYAADAJ6R1001286	23BM39-6	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
31	1CYAADAJ8R1001287	23BM39-7	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
32	1CYAADAJXR1001288	23BM39-8	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft
33	1CYAADAJ1R1001289	23BM40-1	2024	Crane Carrier	LET2-52	Orange		03-14-2023	BATTLE MOTORS			Draft
34	1CYAADAJ8R1001290	23BM40-2	2024	Crane Carrier	LET2-52	Orange		03-28-2023	BATTLE MOTORS			Draft

EXHIBIT B

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, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:</b>						

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 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 C  
PROJECT BUDGET

<u>Description</u>	<u>Amount</u>
Acquisition of Facility Equipment	\$13,500,000
<b>Total</b>	<b>\$13,500,000</b>



EXHIBIT Z-1

FORM ST-123



New York State Department of Taxation and Finance
New York State Sales and Use Tax
IDA Agent or Project Operator
Exempt Purchase Certificate
Effective for projects beginning on or after June 1, 2014

ST-123
(7/14)

This certificate is not valid unless all entries have been completed.
Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Table with 2 columns: Seller information (Name, Street address, City, State, ZIP code) and Agent/Project Operator information (Name, Street address, City, State, ZIP code, Sales tax ID number).

Mark an X in one: [ ] Single-purchase certificate [ ] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Table for Project information: Name of IDA, Name of project, IDA project number, Street address of project site, City, town, or village, State, ZIP code, and dates of appointment and status ends.

Exempt purchases

(Mark an X in boxes that apply)

- [ ] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[ ] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[ ] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I rendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1836 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship) and Date.

Type or print the name, title, and relationship that appear in the signature box

EXHIBIT Z-2

FORM ST-340



Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340 (1/18)

For period ending December 31, \_\_\_\_\_ (enter year)

Project information

Form with fields for Name of IDA agent/project operator, Employer identification number (EIN), Street address, Telephone number, City, State, ZIP code, Name of IDA, Name of project, IDA project number, Street address of project site, Date project began, Completion date of project, Actual/Expected checkboxes, and Total sales and use tax exemptions.

Representative information (not required)

Form with fields for Authorized representative, if any, Title, Street address, Telephone number, City, State, ZIP code.

Certification

Certification text: I certify that the above statements are true, complete, and correct... Print name of officer, employee, or authorized representative, Title of person signing, Signature, Date.

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, W A HARRIMAN CAMPUS, ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 675 of the Laws of 1975 of the State, as amended.

“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.

“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 Facility Sublease Agreement and the Lease Agreement.

“Authorizing Resolution” means the resolution adopted by the Agency on May 24, 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; and in the case of the Company, the President and such additional persons as, at the time, are designated to act on behalf of the Company.

“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.

“Closing Date” means the date of the Lease Agreement.

“Company” means Encon Industries Corp., a corporation, organized and validly existing under the laws of the State of New York and its successors and assigns.

“Company Documents” means the Facility Sublease Agreement, the Lease Agreement and the Service Agreement.

“Company Sales Tax Savings” means all Sales Tax Exemption savings realized by or for the benefit of the Company pursuant to this Lease Agreement.

“Completion Date” means the date of completion of the Equipment Project Work as certified pursuant to Section 3.6 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.

“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.)

“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 Equipment, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility Equipment.

“Equipment Project” shall have the same meaning as set forth in the recitals hereto.

“Equipment Project Budget” shall have the same meaning as set forth in Exhibit C.

“Equipment Project Work” means the acquisition of the Facility Equipment.

“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.

“Facility Equipment” shall have the same meaning as set forth in the recitals hereto.

“Facility Sublease Agreement” means the Facility Sublease Agreement, dated the Closing Date, between the Company to the Agency with respect to the Facility Equipment, as the same may be amended from time to time.

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

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

“Form ST-340” shall mean NYSDTF Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by 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 or State Sales Tax Savings with respect to industrial development agency transactions.

“FTE(s)” 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 Company’s facilities located in the Town, 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.

“Independent Accountant” shall mean 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.

“Lease Agreement” means the Equipment Lease and Project Agreement, dated as of the Closing Date, by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, 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.

“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.

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

“Maximum Company Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company is permitted to receive under the Lease Agreement, which shall not exceed \$1,155,750, 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.

“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.

“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, (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 Equipment, (i) the Facility Sublease Agreement and the Lease Agreement, (ii) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens which are approved in writing the Agency or its counsel, (iii) Liens for taxes not yet delinquent, (iv) the Lease and Sublease Agreement and the other Lease Documents (as defined in the Lease and Sublease Agreement) and (v) purchase money security interests and blanket liens.

“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.

“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”.

“Prohibited Person” shall mean:

(a) any Person (i) that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the Town or the Agency, or (ii) that directly or indirectly controls, 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 Application Information” means the application and questionnaire submitted to the Agency on June 29, 2022, as supplemented and amended 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.

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

“Public Purposes” shall mean 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.

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

“Recapture Event” has the meaning ascribed to such term in Section 5.2 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 Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Equipment Project.

“Sales Tax Registry” shall mean the Sales Tax Registry in the form set forth in Exhibit B.

“Sales and Use Taxes” shall mean 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 5.1 of the Lease Agreement.

“State” means the State of New York.

“State Sales and Use Taxes” shall mean 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” shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company pursuant to the Lease Agreement.

“Substitute Facility Equipment” means equipment or machinery of substantially the same nature as the proposed Facility Equipment.

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

“Termination Date” shall mean such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.1 of the Lease Agreement.

“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.