

EXHIBIT C

Project Agreement

GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY
as sublessor

AND

[_____]
as sublessee

SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)

DATED AS OF [_____] 1, 20__

ADDRESS: _____
Glen Cove

COUNTY: Nassau
STATE: New York
SECTION:
BLOCK:
LOTS:

Prepared By:

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Garden City, NY 11530
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TABLE OF CONTENTS

ARTICLE I	DEFINITIONS.....	3
	SECTION 1.1 DEFINITIONS.....	3
	SECTION 1.2 INTERPRETATION.	10
ARTICLE II	REPRESENTATIONS, WARRANTIES AND COVENANTS	11
	SECTION 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY.....	11
	SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.	12
ARTICLE III	CONVEYANCE AND USE OF PROJECT FACILITY	15
	SECTION 3.1 CONVEYANCE TO THE AGENCY. (A).....	15
	SECTION 3.2 USE OF PROJECT FACILITY.....	16
	SECTION 3.3 HAZARDOUS MATERIALS.	16
	SECTION 3.4 NON-MERGER.....	18
	SECTION 3.5 TITLE INSURANCE.	18
ARTICLE IV	UNDERTAKING AND COMPLETION OF THE PROJECT	19
	SECTION 4.1 ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.	19
	SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.	21
	SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.....	22
ARTICLE V	DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE	23
	SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY.	23
	SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.	23
	SECTION 5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE,	23
	SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.	24
	SECTION 5.5 GRANT OF SECURITY INTEREST	25
ARTICLE VI	MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE	26

SECTION 6.1	MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.	26
SECTION 6.2	TAXES, ASSESSMENTS AND UTILITY CHARGES.....	28
SECTION 6.3	INSURANCE REQUIRED.	28
SECTION 6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	30
SECTION 6.5	APPLICATION OF NET PROCEEDS OF INSURANCE.....	31
SECTION 6.6	PAYMENTS IN LIEU OF TAXES.....	31
ARTICLE VII	DAMAGE, DESTRUCTION AND CONDEMNATION.....	32
SECTION 7.1	DAMAGE OR DESTRUCTION.....	32
SECTION 7.2	CONDEMNATION..... Error! Bookmark not defined.	
SECTION 7.3	ADDITIONS TO THE PROJECT FACILITY.	34
ARTICLE VIII	SPECIAL COVENANTS.....	35
SECTION 8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS".	35
SECTION 8.2	HOLD HARMLESS PROVISIONS.	35
SECTION 8.3	RIGHT OF ACCESS TO THE PROJECT FACILITY.	36
SECTION 8.4	COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS.....	36
SECTION 8.5	AGREEMENT TO PROVIDE INFORMATION.	37
SECTION 8.6	BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.....	37
SECTION 8.7	COMPLIANCE WITH APPLICABLE LAWS.	37
SECTION 8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.	38
SECTION 8.9	PERFORMANCE OF THE COMPANY'S OBLIGATIONS.....	38
SECTION 8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS.....	38
SECTION 8.11	EMPLOYMENT OPPORTUNITIES.....	38
SECTION 8.12	SALES AND USE TAX EXEMPTION.....	39
SECTION 8.13	IDENTIFICATION OF THE EQUIPMENT.	44
SECTION 8.14	FINANCIAL STATEMENTS.	44
ARTICLE IX	ASSIGNMENTS; LEASING; MERGER OF THE AGENCY.....	46
SECTION 9.1	ASSIGNMENT OF THIS LEASE.	46
SECTION 9.2	MERGER OF THE AGENCY.	46
SECTION 9.3	SALE OR LEASE OF THE PROJECT FACILITY. .	46

ARTICLE X	EVENTS OF DEFAULT AND REMEDIES	48
	SECTION 10.1	EVENTS OF DEFAULT DEFINED..... 48
	SECTION 10.2	REMEDIES ON DEFAULT. 51
	SECTION 10.3	REMEDIES CUMULATIVE..... 52
	SECTION 10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES..... 52
	SECTION 10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. 52
ARTICLE XI	OPTIONS TO TERMINATE.....	53
	SECTION 11.1	EARLY TERMINATION OF THE LEASE..... 53
	SECTION 11.2	OBLIGATION TO TERMINATE THE LEASE. 53
	SECTION 11.3	RESERVED..... 54
	SECTION 11.4	RECAPTURE OF AGENCY BENEFITS..... 54
ARTICLE XII	MISCELLANEOUS.....	56
	SECTION 12.1	NOTICES..... 56
	SECTION 12.2	BINDING EFFECT, 57
	SECTION 12.3	SEVERABILITY..... 57
	SECTION 12.4	AMENDMENT. 57
	SECTION 12.5	EXECUTION OF COUNTERPARTS..... 57
	SECTION 12.6	APPLICABLE LAW..... 57
	SECTION 12.7	SURVIVAL OF OBLIGATIONS. 57
	SECTION 12.8	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING..... 58
	SECTION 12.9	NO RECOURSE; SPECIAL OBLIGATION..... 58
	SECTION 12.10	NET LEASE. 59
	SECTION 12.11	WAIVER OF JURY TRIAL..... 59
	SECTION 12.12	PRIOR AGREEMENTS..... 59
	SECTION 12.13	SERVICE OF PROCESS. 59
	SECTION 12.14	THIRD PARTY BENEFICIARIES..... 60
	SECTION 12.15	NON-DISCRIMINATION. 60
	SECTION 12.16	DATE OF LEASE. 60
	SECTION 12.17	RECORDING AND FILING. 60
	SECTION 12.18	SUBORDINATION..... 61

- EXHIBIT A - Description of the Land
- EXHIBIT B - Description of the Equipment
- EXHIBIT C - Form of Termination of Company Lease
- EXHIBIT D - Form of Bill of Sale to Company
- EXHIBIT E - Form of Sales Tax Agency Agreement
- EXHIBIT F - Form of Termination of Sublease Agreement
- EXHIBIT G - Forms of Annual Employment Reports
- EXHIBIT H - Copy of PILOT Agreement

**SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)**

THIS SUBLEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of [_____] 1, 2016 (this "Lease") by and between the GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 9 Glen Street, Glen Cove, NY 11542 (the "Agency"), and [_____] (the "Company").

WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act, as in effect as of the date of this Lease, being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: [____]; and

WHEREAS, [insert Project specific review process recitals]; and

WHEREAS, by resolution adopted by the members of the Agency on [____], 20__ (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance (as hereinafter defined) and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease and in the other Transaction Documents; and

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (i) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, (ii) [there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company] OR [although the Project could be undertaken without the granting of the Financial Assistance, the Agency should undertake the Project because _____]; and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Company will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (the "Company Lease") between the Company and the Agency, which conveys to the Agency a leasehold interest in and to the Premises (as hereinafter defined), and (B) a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith between the Company and the Agency (the "PILOT Agreement"), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Premises and such obligation is secured by a Mortgage and Assignment of Leases and Rents of even date herewith (the "PILOT Mortgage") from the Company and the Agency, as mortgagor, to the City of Glen Cove, as mortgagee (the "PILOT Mortgagee"), pursuant to which the Agency and the Company grant a first mortgage on the Premises to the PILOT Mortgagee; and

WHEREAS, in order to finance a portion of the costs of the Project, a bank, trust company or other financial institution (the "Bank"), may make loans to the Company in the aggregate principal amount of up to \$[_____] (the "Bank Loan"), which Bank Loan would be evidenced by one (1) or more promissory notes and/or loan agreements (together with all modifications, renewals and replacements therefore, collectively, the "Bank Note") made by the Company to the Bank in the aggregate principal amount of the Bank Loan; and

WHEREAS, in order to secure the obligations of the Company to the Bank under the Bank Note, the Company may execute and deliver one (1) or more mortgages in favor of the Bank in the maximum aggregate principal amount of the Bank Loan (collectively, the "Bank Mortgage"), which Bank Mortgage the Agency may execute for the sole purpose of subjecting to the lien thereof its interest in the Premises, and pursuant to which Bank Mortgage the Company and the Agency would grant to the Bank a mortgage lien on the Premises;

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

ARTICLE I
DEFINITIONS

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

“Act” shall have the meaning assigned to such term in the recitals to this Lease.

“Administrative Fee” shall have the meaning assigned to such term in Section 5.3(B) of this Lease.

“Affiliate” of a Person shall mean a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term “control” 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, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

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

“Annual Fee” shall have the meaning assigned to such term in Section 5.3(C) of this Lease.

“Anti-Terrorism Laws” means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

“Applicable Law” or “Applicable Laws” means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial

or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

“Application” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorizing Resolution” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary, Executive Director, Administrative Director or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

“Bank” shall have the meaning assigned to such term in the recitals to this Lease, together with such entity’s successors and/or assigns, provided that the Agency is given notice of any such succession or assignment in accordance with Section 12.1 of this Lease.

“Bank Loan” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Mortgage” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Note” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Agency” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company, pursuant to which the Agency conveys to the Company all of the Agency’s interest in the Equipment, substantially in the form attached as Exhibit D to this Lease.

“Building” shall have the meaning assigned to such term in the recitals to this Lease.

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

“City” means the City of Glen Cove, Nassau County, New York.

“Closing” means the closing at which this Lease and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

“Closing Date” means the date of the Closing.

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

“Collateral” shall have the meaning assigned to such term in Section 5.5 of this Lease.

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

“Company” means [_____], and its successors and assigns, to the extent permitted pursuant to this Lease.

“Company Lease” shall have the meaning assigned to such term in the recitals to this Lease.

“Completion Date” means such date as shall be certified by the Company to the Agency (and accepted by the Agency in its reasonable discretion) as the date of completion of the Project pursuant to Section 4.2 of this Lease, or such earlier date as the Company shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

“Compliance Report” shall have the meaning assigned to such term in Section 8.12 of this Lease.

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

“County” means the County of Nassau, New York.

“Default Interest Rate” means a rate of interest equal to eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less.

“Environmental Indemnification” means the Environmental Compliance and Indemnification Agreement of even date herewith from the Company and the Guarantor in favor of the Agency.

“Environmental Law” or “Environmental Laws” shall have the meaning assigned to such term in Section 3.3 of this Lease.

“Equipment” shall have the meaning assigned to such term in the recitals to this Lease and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease, including without limitation, all the Property described in Exhibit B attached to this Lease. “Equipment” shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other

similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

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

“Financial Assistance” means [(A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit, (B) an exemption from mortgage recording tax with respect to the recording of the Bank Mortgage and the PILOT Mortgage and having a value not exceeding the Maximum Mortgage Recording Tax Benefit, and (C) an exemption from real property taxes pursuant to the PILOT Agreement, which the Agency has estimated to have a value of \$ _____.]

“Governmental Authority” means the United States of America, the State, any other state, the County, the City, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

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

“Guarantor” or “Guarantors” means, individually or collectively, as the context may require, [_____], each a natural person.

“Guaranty” means the Guaranty of even date herewith from the Guarantors to the Agency.

“Hazardous Materials” means all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation of any Governmental Authority having jurisdiction.

“IDA Meeting” shall have the meaning assigned to such term in the recitals to this Lease.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Lease or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

"Land" shall have the meaning assigned to such term in the recitals to this Lease and is more particularly described in Exhibit A to this Lease.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including, but not limited to, mechanics', materialmen's, landlord's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Transaction Documents, a Person shall also be deemed to be the owner of any Property that 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.

"Maximum Mortgage Recording Tax Benefit" means \$[_____].

"Maximum Sales Tax Benefit" means \$[_____].

"Minimum Employment Requirement" shall have the meaning assigned to such term in Section 2.2 of this Lease.

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

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and are identified on Schedule B to the Title Policy, (B) Liens for taxes, assessments and utility charges, to the extent permitted by this Lease, (C) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (D) the Bank Mortgage, and (E) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent may be granted or denied in the Agency's sole and absolute discretion.

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

"PILOT Agreement" shall have the meaning assigned to such term in the recitals to this Lease.

"PILOT Mortgage" shall have the meaning assigned to such term in the recitals to this Lease.

“PILOT Mortgagee” means the City, on behalf of itself and such other instrumentalities to which amounts shall be due and owing pursuant to the PILOT Agreement, and its successors and/or assigns under the PILOT Mortgage.

“Plans and Specifications” means the plans and specifications for the construction, installation and equipping of the Project Facility contemplated by Section 4.1 of this Lease prepared by the Company’s architect and reviewed by the Agency (solely for purposes of the granting of the Financial Assistance) and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof and subject to the review and approval of the Agency (solely for purposes of determining compliance with this Lease).

“Premises” means the Land, together with the Building, and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land; provided, however, that nothing in this definition shall constitute the Agency’s consent to the construction of any new building or structure thereon or the construction of an addition to any existing building or structure thereon, other than the construction, installation and equipping of the improvements depicted in the Plans and Specifications.

“Prohibited Person” means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or the City, or (B) 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 or cure period, of its obligations under any written agreement with the Agency or the City, unless such default or breach has been waived in writing by the Agency or the City, as the case may be, and (ii) any Person (A) 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 (B) 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.

“Project” means that project being undertaken by the Agency consisting of (A) the acquisition of a leasehold interest in the Premises, (B) the construction of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the granting of the Financial Assistance, and (E) the subleasing of the Project Facility by the Agency to the Company, all as more particularly described in the recitals to this Lease.

“Project Facility” shall have the meaning assigned to such term in the recitals to this Lease.

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

“Public Hearing” shall have the meaning assigned to such term in the recitals to this Lease.

“Quarterly Sales Tax Report” shall have the meaning assigned to such term in Section 8.12(C) of this Lease.

“Real Property Tax Exemption Form” shall have the meaning assigned to such term in Section 6.6 of this Lease.

“Recapture Event” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“Report” shall have the meaning assigned to such term in the recitals to this Lease.

“Restricted Party” means any individual or entity: (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the “Specially Designated Nationals and Blocked Persons” list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

“Sales Tax Agency Agreement” shall have the meaning assigned to such term in Section 8.12 of this Lease.

“Scheduled Completion Date” shall have the meaning assigned to such term in Section 4.2(A) of this Lease.

“SEQRA” shall have the meaning assigned to such term in the recitals to this Lease.

“Special Counsel” means the law firm of Phillips Lytle LLP, Garden City, New York, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Agency.

“State” means the State of New York.

“State Sales and Use Taxes” means sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

“Stated Expiration Date” shall have the meaning assigned to such term in Section 5.2(B) of this Lease.

"Sub-Agent Agency Agreement" shall have the meaning assigned to such term in Section 8.12(H) of this Lease.

"Sublease Agreement" or "Sublease Agreements" means any lease, sublease, sub-sublease or other occupancy agreement with respect to the Project Facility, or any part thereof, permitted or approved pursuant to Section 9.3 of this Lease, other than this Lease and the Company Lease.

"Sublessee" or "Sublessees" means each tenant, lessee, sublessee, sub-sublessee or other occupant under a Sublease Agreement.

"Taxing Entities" shall have the meaning assigned to such term in Section 6.6 of this Lease.

"Termination of Company Lease" means the termination of company lease from the Agency to the Company, pursuant to which the Agency terminates the Company Lease, substantially in the form attached as Exhibit C to this Lease.

"Termination of Lease" means the termination of sublease agreement between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit F to this Lease.

"Title Policy" shall have the meaning assigned to such term in Section 3.5 of this Lease.

"Transaction Documents" means the Company Lease, the Bill of Sale to Agency, the PILOT Agreement, the PILOT Mortgage, this Lease, the Environmental Indemnification, the Sales Tax Agency Agreement, any Sub-Agent Agency Agreement and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

"UCC" shall have the meaning assigned to such term in Section 5.5 of this Lease.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3 (B) and (C), 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7, 12.9 and 12.19 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(G), 3.1, 3.3, 4.1, 5.3, 5.4, 6.4(B), 6.6, 8.2, 8.9, 8.12, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of this Lease and as Recapture of Benefits pursuant to Section 11.4 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement, the PILOT Mortgage and Section 5.5 and Article X of this Lease.

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

(A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease, refer to this Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the Closing Date;

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

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

(D) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

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

(F) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time in accordance with the terms hereof.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

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

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease and the other Transaction Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease or the other Transaction Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, nor will constitute a default by the Agency under any of the foregoing.

(C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project

Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.

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

(A) The Company is a [limited liability company] duly organized, validly existing and in good standing under the laws of the State of New York, is qualified and authorized to do business as a foreign [limited liability company] in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Lease and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its [members/managers], the Company has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the [members or managers] of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Lease or any of the other Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project Facility by the Company as agent of the Agency, the sublease thereof by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any Sublessee of the Project Facility, or any part thereof, from one area of the State to another area of the State (other than relocations within the City) or in the abandonment of one or more plants or facilities of the Company or any Sublessee of the Project Facility, or any part thereof, located in the State (other than within the City); provided, however, that nothing in this Section shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof without the

prior written consent of the Agency, except as set forth in Section 9.3 of this Lease. Therefore, the provisions of subdivision (J) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.

(D) The Transaction Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Company, enforceable in accordance with their respective terms.

(E) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the City. The Project Facility is, and so long as this Lease shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(G) The Project will not have a "significant adverse environmental impact" (as such term is used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the resolution adopted by the Agency on [____], 20__, under SEQRA applicable to the acquisition, construction, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Lease and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of such resolution which would cause the determinations contained therein to be untrue.

(H) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(I) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

(J) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(K) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.

(L) The subleasing of the Project Facility by the Agency to the Company and the granting of the Financial Assistance have induced the Company to proceed with the Project in the City. The granting of the Financial Assistance by the Agency with respect to the Project Facility, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

(M) The Company shall [_____] (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, installation and equipping of the Project Facility.

(O) The Company is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Company or any Guarantor is a Prohibited Person and no member, manager, director or shareholder of the Company is a Prohibited Person.

(P) Neither this Lease nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company or any Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

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

(R) The Company is, and shall at all times during the term of this Lease, continue to be owned solely by [_____].

(S) The Project Facility is located entirely within the boundaries of the City.

(T) The total cost of the Project is at least \$[_____].

(U) As of the Closing Date, no leases, licenses or other occupancy arrangements exist with respect to the Project Facility or any part thereof except this Lease and the Company Lease, and no Person is in occupancy or possession of any portion of the Project Facility, other than the Company.

(V) The Company has not conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company from executing and delivering the Company Lease, this Lease or any other Transaction Document. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement pursuant to which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.

(W) Neither the Company, nor any Guarantor nor any Affiliate of the Company or any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Lease or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(X) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

(Y) The recording of the Bank Mortgage shall not result in the claiming of an exemption from mortgage recording tax in excess of the Maximum Mortgage Recording Tax Benefit.

ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that it has good and valid fee title to the Premises, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or

liability due to any defect in title thereto or due to any defect in the leasehold interest granted to the Agency pursuant to the Company Lease.

(B) The Company and the Agency acknowledge that the Project Facility and the leasehold interest therein conveyed to the Agency from the Company and subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, (i) the Company's obligation to acquire, construct, install, equip and maintain the Project Facility on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Lease and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than by the Company as a [_____], together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Lease to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

Nothing in this Section shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (each, an "Environmental Law" and, collectively, the "Environmental Laws"), (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company has all Environmental Permits required to construct and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any

similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company's knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Premises, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

(B) The Company shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Environmental Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any Sublessee of the Project Facility, or any part thereof, an unlawful release of Hazardous Materials onto, under or from the Project Facility or onto any other property. The Company shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or its members, managers, shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility, except in compliance with all Environmental Laws.

(C) The Company shall comply with and cause all Sublessees of the Project Facility, or any part thereof, to comply with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and shall cause all such Sublessees to obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company agrees to provide the Agency with copies of any notifications given by the Company to any Governmental Authorities or received by the Company from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility. The Company hereby agrees that at all times during which it owns, leases or operates the Project Facility, and whether or not this Lease or any other Transaction Document is in effect, to comply with, and ensure compliance by all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the Environmental Indemnification.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Materials on, from or affecting the Project Facility (a) in accordance with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (a) the

presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

(E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time, and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Environmental Laws.

(G) In the event that insurance is or shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

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

SECTION 3.5 TITLE INSURANCE. On or prior to the Closing Date, the Company will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) an owner's title insurance policy (the "Title Policy") insuring the Agency's leasehold interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) a mortgagee title insurance policy insuring the PILOT Mortgagee's mortgage interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, and (c) a current survey of the Premises certified to the Agency, the Company, the PILOT Mortgagee and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall

be paid to the Company and applied by the Company to remedy the applicable defect in title. If not so capable of being applied or if a balance remains after such application, the Net Proceeds or the remaining balance of the Net Proceeds, as the case may be, shall be applied to the payment of any sums due the Agency under this Lease or under any other Transaction Document, and any balance thereafter may be used by the Company for any lawful company purpose.

ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility, all in accordance with the Plans and Specifications, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct any new structure on the Land (other than the Building) or construct an addition to or otherwise increase the useable square footage of the Building depicted in the Plans and Specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency.

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

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

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

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, construct, install and equip the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which

may be required or proper, all for the acquisition, construction, installation and equipping of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition, construction, installation and equipping of the Project Facility from funds made available therefor in accordance with this Lease, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, installation and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

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

(G) The Company shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction would result in jurisdictional disputes or strikes or labor disharmony in connection with the Project.

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

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

(J) The Company agrees, (i) at the sole expense of the Company, to erect signage at the Project Facility during the construction, installation and equipping of the Project Facility, which signage shall be in form and content reasonably satisfactory to the Agency and shall identify the Agency and its role in the Project, (ii) at the option of the Agency and at the sole expense of the Company, to install within the Project Facility a sign or plaque permanently memorializing the Agency's role in the Project, which sign or plaque shall be in form, content and placed in a location satisfactory to the Agency, and (iii) that the Agency may otherwise publicize the Agency's role in the Project.

(K) The Company agrees to solicit bids or cause to be solicited bids from at least one (1) contractor or vendor based in the City for each contract entered into with respect to the Project Facility, including, without limitation, contracts for construction (including, without limitation, the initial construction, installation and equipping of the Project Facility), renovation, alteration, management, purchase of goods or services, maintenance and repair, provided that the required goods and/or services are available from a contractor/vendor based in the City. Further, the Company covenants to use its best efforts to let such contracts or cause its contractors or subcontractors to let such contracts, where practicable, to contractors or vendors based in the County.

(L) W/MBE Contractors.

(1) The Company will use its best efforts to take or cause to be taken "affirmative steps" (as defined below) to assure that qualified women-owned and/or minority-owned business enterprises ("W/MBE's") are used, when possible, for each contract entered into with respect to the Project Facility, including, without limitation, contracts for construction (including, without limitation, the initial construction, installation and equipping of the Project Facility), renovation, demolition, replacement, alteration, management, purchase of goods and services, maintenance and repair, provided that the required goods and/or services are available from a W/MBE.

(2) For purposes of this subsection, the term "affirmative steps" shall mean: (a) placing qualified W/MBE's on solicitation lists; (b) assuring that qualified W/MBE's are solicited whenever they are potential sources; (c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified W/MBE's; (d) establishing delivery schedules, where the requirement permits, that encourage participation by qualified W/MBE's; and (e) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in clauses (a) through (d).

(3) For purposes of this subsection, the term "qualified W/MBE's" shall mean those women-owned and/or minority-owned business enterprises designated as such by New York State.

(M) The Company covenants and agrees to make a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$[] (which represents the product of (1) 0.90 and (2) the sum of \$[] being the total project costs as stated in the Application. The Agency shall provide written documentation of such investment, in form and substance satisfactory to the Agency, no later than February 11th of the calendar year following the Scheduled Completion Date.

(N) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

(A) The Company will proceed with due diligence to commence construction, installation and equipping of the Project Facility in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the construction, installation and equipping of the Project Facility on or before [] (the "Scheduled Completion Date") and shall commence its operations in the Project Facility on or before the Scheduled Completion Date and thereafter continuously operate its business at the Project Facility. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the construction, installation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, construction, installation and equipping of the Project Facility have been completed in a good and workmanlike manner, (D) that the Company and the Agency have good and valid interests in and to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Such certificate shall be accompanied by a permanent certificate of occupancy for the Building and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

(B) The Company shall pay within the time periods required by applicable Governmental Authorities, all construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hook up fees, water service installation fees and fire line fees, if any.

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction, installation and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

SECTION 4.4 PURPOSE OF THE PROJECT. It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the City and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

ARTICLE V
DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS
AND OTHER AMOUNTS PAYABLE

SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and sublease to the Company, and the Company hereby agrees to rent and sublease from the Agency, a subleasehold interest in the Project Facility, subject only to the Permitted Encumbrances.

(A) DURATION OF THE LEASE TERM; QUIET ENJOYMENT. The Agency shall deliver to the Company possession of the Project Facility, subject to the provisions of this Lease, and the subleasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, [_____] (the "Stated Expiration Date"), or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.

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

(D) RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. The Company shall pay on the date of execution and delivery of this Lease, as the basic sublease payments due hereunder: (1) the sum of \$1.00, (2) all reasonable fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other actual costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction Documents.

(E) The Company agrees to pay to the Agency the following fees: (1) a closing compliance fee in the amount of \$2,500.00, (2) an Agency administrative fee in the amount of \$[_____] , with respect to the Project, and (3) the Agency's general counsel fee in the amount of \$[_____] (collectively, the "Administrative Fee"). The Administrative Fee is due and

payable by the Company to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.

(F) The Company agrees to pay to the Agency an annual administrative fee in the amount of \$1,000 (the "Annual Fee"). The Annual Fee for the first year of the lease term or part thereof (i.e., 20__) shall be due and payable on the Closing Date and the Annual Fee for each year thereafter (i.e., 20__ and thereafter) shall be due and payable, in advance, on January 1 of each year.

(G) Within ten (10) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable fee or expense of the Agency with respect to the Project Facility, the leasing, subleasing or sale of the Project Facility to the Company, the sub-subleasing of portions of the Project Facility to the Sublessees, the payment of which is not otherwise provided for under this Lease.

(H) The Company agrees to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is received by the Agency.

SECTION 5.2 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.

The obligations of the Company to make the payments required by this Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of setoff, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease, or terminate this Lease (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part expressly contained in this Lease, and,

in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.9 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company), servants or employees, past, present and future, of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease, the relationship of the Agency and the Company hereunder or the Company's use and occupancy to the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.3 GRANT OF SECURITY INTEREST. This Lease shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the materials, machinery, equipment, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Company using the Sales Tax Agency Agreement and/or any Sub-Agent Agency Agreement, and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all other payments and obligations of the Company hereunder, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If an Event of Default shall occur under this Lease or any other Transaction Document, the Agency shall have, in addition to any and all other rights and remedies set forth in this Lease, and may exercise without demand, any and all rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take possession of the Equipment and any fixtures or other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

SECTION 5.6 SUB-SUBLEASE The Company covenants and agrees to enforce the Sublease Agreements in accordance with their respective terms as is commercially reasonable for the benefit of the Agency.

(B) In order to further secure the payment and performance of the obligations of the Company under this Lease and the other Transaction Documents, the Company does hereby collaterally assign, transfer and set over to the Agency all of the Company's right, title and interest in and to the Sublease Agreements, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Company's rights and remedies thereunder.

In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Company. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under any Sublease Agreement, or under or by reason of this assignment.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

(A) MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

The Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) occupy, use and operate the Project Facility, and shall cause the Project Facility to be occupied, used and operated, in the manner for which it was intended and contemplated by this Lease, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, (6) perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Bank Mortgage, and (7) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Company in the Project Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(B) Upon prior written notice to the Agency, the Company may make alterations, modifications or improvements to the Project Facility, or any part thereof, provided:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such modification or improvement to the Project Facility, or any part thereof, (b) indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless from all fees, expenses, fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) not be in monetary default under this Lease or under any of the other Transaction Documents beyond applicable notice and cure periods;

(2) such alterations, modifications and improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all Applicable Laws;

(3) the Company shall promptly and fully pay for such alterations, modifications and improvements in accordance with the terms of the applicable contract(s) therefor;

(4) the alteration, modification or improvement to the Project Facility shall not constitute or cause a default under any of the Transaction Documents;

(5) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, modification or improvement to the Project Facility, detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for (a) nonstructural modifications or improvements to the Project Facility which do not exceed, at any one time, \$50,000.00 in value, and (b) non-structural modifications or improvements, without limitation as to amount, performed in connection with customary and reasonable initial tenant improvements;

(6) as a result of such alterations, modifications or improvements, neither the usefulness, structural integrity nor operating efficiency of the Project Facility would be materially impaired in the reasonable judgment of the Agency;

(7) if the cost of such alterations, modifications or improvements is estimated to exceed \$[_____], such alterations, modifications or improvements shall be conducted only after the Company shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance satisfactory to the Agency; provided, however, that such bond or other security need not be furnished to the Agency in connection with (a) customary and reasonable initial tenant improvements, and (b) the initial construction, installation and equipping of the Project Facility;

(8) the Agency receives reasonably satisfactory evidence that such alterations, modifications and alterations do not change the nature of the Project Facility such that it would not comply with the terms of this Lease or such that it would not constitute a "project" (as such quoted term is defined in the Act);

(9) if such alterations, modifications or improvements involve an addition to the Project Facility or would otherwise result, but for the Agency's interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee, the Annual Fee and/or the sums payable under the PILOT Agreement, if any;

(10) no such alterations, modifications or improvements shall be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency; and

(11) an Event of Default shall not have occurred and be continuing under this Lease or any other Transaction Document.

All such alterations, modifications and improvements shall constitute a part of the Project Facility and the Company shall deliver or cause to be delivered to the Agency appropriate documents to convey title to or a leasehold interest in such property, as the case may be, to the Agency, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances, and to subject such property to this Lease.

The provisions of this Subsection (B) shall not apply to the initial construction, installation and equipping of the Project Facility pursuant to the Plans and Specifications.

(C) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith.

(D) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land (other than the Building) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

(E) TAXES, ASSESSMENTS AND UTILITY CHARGES. The Company shall pay as the same respectively become due: (1) 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 Project Facility (other than those taxes for which payments in lieu thereof are being paid pursuant to the PILOT Agreement), (2) all utility and other charges, including "service charges" and deposits, incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority 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 hereunder to pay only such installments as are required to be paid during the term of this Lease.

(F) If the Company fails to pay any tax, assessment or charge required to be paid pursuant to this Section 6.2, the Agency may pay or cause to be paid such taxes, assessments or charges. The Company shall reimburse the Agency for any amount paid under this Section 6.2, together with interest thereon from the date of payment at the Default Interest Rate.

(G) Notwithstanding the provisions of this Section 6.2, the Company may withhold any such payment and the Company may in good faith actively contest the amount, validity or the applicability of any payment referred to in such subsection (A), provided that (1) the Company shall have first notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond applicable notice and cure periods, (3) the overall operating efficiency of the Project for the purposes for which it is intended is not materially impaired, (4) neither the Project Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, (5) the Company shall have set aside on its books adequate reserves with respect thereto, and (6) the Company diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 6.2 INSURANCE REQUIRED. During the term of this Lease, the Company shall maintain insurance with respect to the Project Facility against such risks and liabilities and

for such amounts as are, in the Agency's reasonable judgment, customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company, as insured, the PILOT Mortgagee, as mortgagee, and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company, the PILOT Mortgagee and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction, installation and equipping of the Project Facility.

(C) Commercial general liability insurance protecting the Company, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease), or arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

(D) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection (C) above, Owners & Contractors Liability insurance for the benefit of the Company, the PILOT Mortgagee and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage.

(E) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.

(F) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(G) Such other insurance in such amounts and against such insurable hazards and risks as the Agency from time to time may reasonably require, including, without limitation, environmental hazard and liability insurance.

(H) ADDITIONAL PROVISIONS RESPECTING INSURANCE. All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having an A.M. Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Company, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds, with respect to liability policies, and name the Agency as loss payee and the PILOT Mortgagee as mortgagee, with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Company, the PILOT Mortgagee and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 hereof. At least fifteen (15) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

(I) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.

(J) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency and the PILOT Mortgagee as an additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

(K) Each of the policies evidencing the insurance required by Section 6.3 of this Lease shall provide that: (i) there shall be no recourse against the Agency or the PILOT Mortgagee for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency or the PILOT Mortgagee in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency and the PILOT Mortgagee regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency or the PILOT Mortgagee until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy. Any such insurance policies may be furnished under a so-called "master" or "blanket" policy covering locations other than the Project Facility; provided, however, that if casualty coverage for the Project Facility is provided under a master or blanket policy, such policy must contain an agreed amount endorsement evidencing that such coverage is in an amount sufficient to insure the full replacement cost of the Project Facility.

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

(M) Any provision of this Lease to the contrary notwithstanding, at any time during the term of this Lease that any portion of the Bank Loan is outstanding and the Bank Mortgage remains a Lien on the Project Facility, the Agency agrees that (i) the Bank shall be the loss payee with respect to the Net Proceeds of the insurance required by Sections 6.3(A) and (E) hereof, and (ii) the provisions of Sections 6.5(A) and 7.1(B) hereof shall be superseded and replaced by the applicable provisions of the Bank Mortgage..

SECTION 6.3 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows, subject to Section 6.4(F) of this Lease, (A) the Net Proceeds of the insurance required by Sections 6.3(A) and 6.3(E) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Sections 6.3(B), 6.3(C) and 6.3(D) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

(A) PAYMENTS IN LIEU OF TAXES. It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit H. Accordingly, the parties

hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility. The Company hereby consents to any enforcement action provided to the Taxing Entities pursuant to law in the event that the Company should fail to pay any taxes not exempted as aforesaid and shall not object to any such enforcement action on the grounds that a leasehold interest in the Project Facility is held by the Agency or that the Project Facility is under the Agency's jurisdiction, control or supervision or subject to its activities.

(B) The Agency and the Company hereby agree that the Company shall be required to make or cause to be made payments in lieu of taxes to the school districts, cities, towns, county, villages and other political unit(s) wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities"), in such amounts and at such times as are required by the PILOT Agreement.

(C) Within thirty (30) days after receipt of written request therefore, the Company shall deliver to the Agency official receipts of the Taxing Entities or other proof reasonably satisfactory to the Agency evidencing payment of any amount that the Company is required to pay under the PILOT Agreement.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

(A) DAMAGE OR DESTRUCTION. If the Project Facility shall be damaged or destroyed, in whole or in part:

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

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

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

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

rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4(F) of this Lease, the Net Proceeds collected by the Agency under any and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness, shall be paid to the Company for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to repay the Indebtedness in full.

(C) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3(A) and 6.3(C) hereof.

(D) The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any laws of like import, now or hereafter in effect.

(E) CONDEMNATION. To the best of the Company's knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the Agency's or the Company's interest therein or in the Company Lease or this Lease.

(F) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

(1) the Agency shall have no obligation to restore the Project Facility, or any part thereof;

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

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

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such

Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) subject to the provisions of Section 6.4(F) of this Lease, the Agency shall make available to the Company (solely from the Net Proceeds of any Condemnation award, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(G) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) (4) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4(F) of this Lease, the Net Proceeds of any Condemnation award collected by the Agency, if any, after deducting the amount necessary to repay the Indebtedness, shall be paid over to the Company for its own purposes. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be repaid in full.

(H) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof or any interest therein or in the Company Lease or this Lease and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any Condemnation proceedings and, within seven (7) days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(I) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company, which consent shall not be unreasonably withheld or delayed.

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