

CLOSING ITEM NO.: A-4

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

and

WYAN GROUP LLC

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LEASE AND PROJECT AGREEMENT

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Dated as of May 1, 2019

Town of Babylon Industrial Development Agency  
(A. F. Supply Corp. / Wyan Group LLC)

## TABLE OF CONTENTS

AGREEMENT .....	2
ARTICLE I	
DEFINITIONS .....	2
ARTICLE II	
REPRESENTATIONS AND COVENANTS .....	3
Section 2.1    Representations and Covenants of Agency .....	3
Section 2.2    Representations and Covenants of Company .....	4
ARTICLE III	
CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION .....	6
Section 3.1    Agreement to Convey to Agency .....	6
Section 3.2    Reserved .....	6
Section 3.3    Public Authorities Law Representations .....	6
Section 3.4    Project Work .....	6
Section 3.5    Identification of Facility Equipment .....	7
Section 3.6    Certificates of Completion .....	7
Section 3.7    Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties .....	7
Section 3.8    Construction Signage .....	7
ARTICLE IV	
LEASE OF COMPANY FACILITY RENTAL PROVISIONS .....	8
Section 4.1    Lease of Company Facility .....	8
Section 4.2    Duration of Lease Term; Quiet Enjoyment .....	8
Section 4.3    Rents and Other Amounts Payable .....	9
Section 4.4    Obligations of Company Hereunder Unconditional .....	9
Section 4.5    Assignment of Sublease Agreement .....	10
Section 4.6    No Warranty of Condition or Suitability by Agency .....	10
ARTICLE V	
PILOT PAYMENTS; SALES TAX EXEMPTION; MORTGAGE RECORDING TAX EXEMPTION AND RECAPTURE OF BENEFITS .....	11
Section 5.1    PILOT Payments .....	11
Section 5.2    Sales Tax Exemption .....	16
Section 5.3    Mortgage Recording Tax Exemption .....	21
Section 5.4    Recapture of Agency Benefits .....	21
ARTICLE VI	
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE .....	23
Section 6.1    Maintenance and Modifications of Company Facility by Company. ....	23
Section 6.2    Installation of Additional Equipment .....	24
Section 6.3    Taxes, Assessments and Utility Charges .....	24
Section 6.4    Insurance Required .....	25
Section 6.5    Additional Provisions Respecting Insurance .....	26

Section 6.6	Application of Net Proceeds of Insurance.....	28
Section 6.7	Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.....	28
Section 6.8	Advances by Agency.....	28
Section 6.9	Compliance with Law .....	29
ARTICLE VII		
DAMAGE, DESTRUCTION AND CONDEMNATION .....		30
Section 7.1	Damage or Destruction of the Company Facility.....	30
Section 7.2	Condemnation. ....	31
Section 7.3	Condemnation of Company-Owned Property .....	32
Section 7.4	Waiver of Real Property Law Section 227.....	33
ARTICLE VIII		
SPECIAL COVENANTS .....		33
Section 8.1	Right to Inspect Company Facility.....	33
Section 8.2	Hold Harmless Provisions. ....	33
Section 8.3	Company to Maintain Its Existence .....	35
Section 8.4	Qualification in State.....	35
Section 8.5	Agreement to File Annual Statements and Provide Information .....	35
Section 8.6	Books of Record and Account; Financial Statements .....	36
Section 8.7	Compliance with Orders, Ordinances, Etc. ....	36
Section 8.8	Discharge of Liens and Encumbrances. ....	36
Section 8.9	Depreciation Deductions and Investment Tax Credit .....	37
Section 8.10	Employment Opportunities; Notice of Jobs .....	37
Section 8.11	Calculation of Eligible Employees.....	37
Section 8.12	Employment Information .....	38
Section 8.13	Compensation and Expenses of the Agency .....	38
Section 8.14	Retention of Leasehold Interest in the Facility; Grant of Easements; Release of Land .....	38
Section 8.15	Recording and Filing.....	39
Section 8.16	Further Encumbrances.....	39
ARTICLE IX		
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING.....		39
Section 9.1	Restriction on Sale of Company Facility; Release of Certain Land.....	39
Section 9.2	Removal of Facility Equipment. ....	39
Section 9.3	Assignment and Subleasing.....	40
Section 9.4	Merger of Agency .....	42
ARTICLE X		
EVENTS OF DEFAULT AND REMEDIES .....		42
Section 10.1	Events of Default Defined.....	42
Section 10.2	Remedies on Default. ....	45
Section 10.3	Remedies Cumulative.....	46
Section 10.4	Agreement to Pay Attorneys' Fees and Expenses.....	46
Section 10.5	No Additional Waiver Implied by One Waiver .....	46
Section 10.6	Certificate of No Default .....	46

ARTICLE XI	
EARLY TERMINATION OF LEASE AGREEMENT	
OPTION IN FAVOR OF COMPANY .....	46
Section 11.1	Early Termination of Lease Agreement ..... 46
Section 11.2	Conditions to Termination of Lease Agreement ..... 46
Section 11.3	Conveyance on Termination ..... 47
ARTICLE XII	
LENDER PROVISIONS .....	48
Section 12.1	Subordination of Lease Agreement ..... 48
Section 12.2	Mortgage and Pledge of Agency's Interests to Lender ..... 48
Section 12.3	Pledge of Company's Interest to Lender ..... 49
Section 12.4	Making of Loans; Disbursement of Loan Proceeds ..... 49
Section 12.5	References to Lender, Loan or Mortgage..... 49
ARTICLE XIII	
ENVIRONMENTAL MATTERS .....	49
Section 13.1	Environmental Representations of the Company ..... 49
Section 13.2	Environmental Covenants of the Company..... 51
Section 13.3	Survival Provision ..... 53
ARTICLE XIV	
MISCELLANEOUS .....	53
Section 14.1	Notices..... 53
Section 14.2	Binding Effect ..... 54
Section 14.3	Severability..... 54
Section 14.4	Amendments, Changes and Modifications..... 55
Section 14.5	Execution of Counterparts..... 55
Section 14.6	Applicable Law ..... 55
Section 14.7	List of Additional Facility Equipment; Further Assurances ..... 55
Section 14.8	Survival of Obligations ..... 55
Section 14.9	Table of Contents and Section Headings Not Controlling..... 55
Section 14.10	Third Party Beneficiaries..... 55
Section 14.11	Waiver of Trial by Jury ..... 55
Section 14.12	Non-Discrimination..... 55
Section 14.13	Recourse Under This Lease Agreement..... 56
Section 14.14	Prior Agreements Superseded ..... 56
EXHIBIT A	Legal Description of Real Property ..... A-1
EXHIBIT B	Equipment ..... B-1
EXHIBIT C	Project Cost Budget ..... C-1
EXHIBIT D	Mortgage Requirements..... D-1
EXHIBIT E	List of Appointed Agents..... E-1
EXHIBIT F	Sales Tax Authorization Letter ..... F-1
EXHIBIT G	Mandatory Agent and Subagent Contract Language..... G-1
EXHIBIT H	Sales Tax Registry ..... H-1

EXHIBIT I	Exceptions to Representations and Warranties of Company.....	I-1
EXHIBIT J	Form of Annual Employment and Financial Assistance Certification Letter .....	J-1
EXHIBIT K	Form Tenant Agency Compliance Agreement .....	K-1
EXHIBIT L	Form of Assignment to Company .....	L-1
EXHIBIT M	Form of Bill of Sale to Company .....	M-1
EXHIBIT N	Form of Termination of Lease and Project Agreement .....	N-1
EXHIBIT O	Form of Annual Employment Report .....	O-1
SCHEDULE A – SCHEDULE OF DEFINITIONS.....		Sch. A-1

THIS LEASE AND PROJECT AGREEMENT, dated as of May 1, 2019 (this "Lease Agreement"), is between the TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 47 West Main Street, Suite 3, Babylon, New York 11702 (the "Agency"), and WYAN GROUP LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 942 Lafayette Avenue, Brooklyn, New York 11221 (the "Company").

## RECITALS

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

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 177 of the Laws of 1973 of the State, as amended (collectively, the "Act"), the Agency was created and is empowered under the act to undertake the Project Work and the leasing of the Facility as each term is defined below; and

WHEREAS, the Project shall consist of: (A)(1) the acquisition of an interest in approximately 2.25 acres of real estate located at 150 Wyandanch Avenue, Wyandanch (Tax Map #0100-082.00-01.00-015.009), in the Town of Babylon, Suffolk County, New York (the "Land") and an approximately 29,145 square foot building located on the Land (the "Improvements") and the acquisition and installation therein of certain equipment and personal property not part of the Equipment (as such term is defined herein) (the "Facility Equipment"; and, together with the Land and the Improvements, the "Company Facility"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to A. F. Supply Corp. (the "Sublessee"); and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Facility, the "Facility"), which Facility will be used by the Sublessee as a distribution and warehouse facility for its business as a distributor of products for the plumbing and heating industry; (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes and real property taxes (collectively, the "Financial

Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Facility to the Sublessee or the Company or such other person as may be designated by the Sublessee and the Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Sublessee or such other person as may be designated by the Sublessee agreed upon by the Agency; and

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

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease, dated as of May 1, 2019 (the “Company Lease”), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Facility Equipment to the Agency pursuant to a certain Bill of Sale to Agency, dated the Closing Date (the “Bill of Sale to Agency”); and

WHEREAS, the Agency has agreed to sublease and lease the Company Facility to the Company, and the Company desires to rent the Company Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility to the Sublessee pursuant to the Sublease Agreement; and

WHEREAS, the Sublessee has agreed to transfer title to the Equipment to the Agency pursuant to an Equipment Bill of Sale, dated the Closing Date (the “Equipment Bill of Sale”); and

WHEREAS, the Agency has agreed to lease the applicable Equipment to the Sublessee pursuant to the terms of an Agency Compliance Agreement, by and between the Agency and the Sublessee.

## AGREEMENT

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

## ARTICLE I DEFINITIONS

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

## ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

(b) The Agency will acquire a leasehold interest in the Land and Improvements, cause the Improvements to be renovated and the Facility Equipment to be acquired and installed and will lease and sublease the Company Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution dated April 17, 2019, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company and the Sublessee relating to the Facility, the renovation and equipping of the Facility is a Type II action within the meaning of the SEQRA Act.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company and the Sublessee to utilize the Facility in the Town of Babylon, New York in furtherance of the Public Purposes of the Agency.

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

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

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

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Company's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

(e) The Facility is and will continue to be a "project" as such quoted term is defined in the Act, and the Company intends to operate the Facility, or cause the Facility to be operated, in accordance with this Lease Agreement as an Approved Facility. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, no sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act.

(f) The completion of the Facility will not result in the removal of a plant or facility of the Company or the Sublessee or any other proposed occupant of the Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of the Company or the Sublessee or of any proposed occupant of the Facility located in the State.

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

(h) In accordance with the provisions of Section 9.3 hereof, the Company will not lease or sublease the Facility other than pursuant to the Sublease Agreement.

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

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

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

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

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

(n) The Company is not a Prohibited Person.

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

(p) The Company, to the best of its knowledge, is in compliance, and will undertake commercially reasonable efforts to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

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

(r) All financial assistance provided by the Agency shall inure to the sole benefit of the Company and the Sublessee.

### ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

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

Section 3.2 Reserved.

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

Section 3.4 Project Work.

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

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that the Facility shall retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

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

(d) 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 3.4.

(e) The Company, as agent for the Agency, shall comply in all material respects with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. Except as provided in the preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

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

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; and (ii) such other certificates as may be reasonably satisfactory to the Agency, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to complete the Project Work by August 31, 2019.

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

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

ARTICLE IV  
LEASE OF COMPANY FACILITY RENTAL PROVISIONS

Section 4.1    Lease of Company Facility.

(a)    The Agency hereby subleases and leases the Company Facility, consisting of the Land as more particularly described in Exhibit A attached hereto and the Improvements and the Facility Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Company Facility from the Agency upon the terms and conditions of this Lease Agreement. The Agency hereby delivers to the Company, and the Company hereby accepts, sole and exclusive possession of the Facility (it being understood by the parties hereto that delivery of possession to the Agency of the Facility as the same is acquired, constructed and renovated shall take no further act or deed by the parties hereto).

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

Section 4.2    Duration of Lease Term; Quiet Enjoyment.

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

(b)    Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on February 28, 2033 (the “Lease Term”).

(c)    Except as provided in Sections 9.3 and 10.2 hereof, and so long as the Company shall pay the Rental Payments payable by it under this Lease Agreement and the Company shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Company Facility and will, at the request of the Company and at the Company’s sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Company Facility as hereinabove provided.

#### Section 4.3 Rents and Other Amounts Payable.

(a) **Base Rent.** The Company shall pay to the Agency on the Closing Date Base Rent for the Company Facility as follows: on the Closing Date, the Company shall pay, as the Base Rent due hereunder, (1) a single lump sum basic rental payment, equal to the Agency's administrative fee relating to the Project; and (2) the fees and expenses of counsel to the Agency relating to the Project.

(b) **Additional Rent.** In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent any additional amounts (including amounts payable under Section 5.1 hereof), required to be paid by the Company to or for the account of the Agency hereunder and, within ten (10) days of receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership, leasing, subleasing, or financing of the Company Facility, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall be in addition to any annual or continuing administrative or management fee imposed by the Agency now or hereafter.

(c) **Missed Payments.** In the event the Company should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid has been paid in full, together with interest thereon from the date due, subject to applicable notice and cure period, at the applicable interest rate stated in this Lease Agreement where so provided, or if not so provided, at twelve percent (12%) per annum.

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

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to pay Rental Payments, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement. The Company waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

**Section 4.5    Assignment of Sublease Agreement.** In order to secure the payment and performance of obligations of the Company under this Lease Agreement, the Company does hereby assign, transfer and set over to the Agency, subject and subordinate to any assignment, collateral or otherwise, now or hereafter made or given from the Company to the Mortgagee or any successor thereof, all of the Company's right, title and interest in and to the Sublease Agreement, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Company's rights and remedies thereunder, provided, so long as no Event of Default has occurred and the Company has satisfied and is then presently satisfying all payments required to be made to the Agency under this Lease Agreement, the Company shall have the right to utilize such excess sublease rentals, revenues and receipts as the Company determines in its sole and absolute discretion.

The Company agrees not to terminate, modify or amend the Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency, and any attempted termination, modification or amendment of the Sublease Agreement without such written consent shall be null and void.

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 the Sublease Agreement or under or by reason of this assignment.

**Section 4.6    No Warranty of Condition or Suitability by Agency.** THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE COMPANY FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE COMPANY FACILITY, OR THE SUITABILITY OF THE COMPANY FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF AND THE SUBLESSEE, IS SATISFIED THAT THE COMPANY FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY AND THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE COMPANY FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

Section 5.1 PILOT Payments.

(a) Description and Address of Project: The Project consists of the acquisition and equipping of an approximately 29,145 square foot building, all on a certain lot of land for use by Sublessee as a distribution and warehouse facility for its business as a distributor of products for the plumbing and heating industry. The Land and Improvements are located at 150 Wyandanch Avenue, Wyandanch in the Town of Babylon, New York being District 0100, Section 082.00, Block 01.00, Lot 015.009.

(b) Payments Prior to PILOT Commencement Date: The PILOT Commencement Date shall be as defined in subsection (d) hereof. Until the PILOT Commencement Date, or such later date as the Land and Improvements are determined to be exempt from real estate taxes, the Company shall pay to the Town or the Agency as the case may be all real estate taxes with respect to the Land and Improvements at such times, in such manner and in such amounts as would be applicable if the Land and Improvements were owned by the Company and the Agency did not have a leasehold interest therein.

(c) Payments in Lieu of Real Estate Taxes, Generally: It is recognized that under the provisions of the Act the Agency is generally required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Agency and the Company agree, however, that the Company shall be required to make payments in lieu of real estate taxes with respect to the Land and Improvements, payable to the Agency, in the manner and at the time provided in subsection (d) below or at such other times as the Agency may designate in writing. Savings granted under this section are approximately \$372,500. Such savings are estimated based on the current assessed value and tax rates of the Taxing Jurisdictions. Actual savings are subject to change over the term of this Lease Agreement depending on any changes to assessed value and/or tax rates of the Taxing Jurisdictions.

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

(d) Payments in Lieu of Taxes on the Land and the Improvements: For the period commencing on the PILOT Commencement Date (hereinafter defined) until the earlier of (i) February 28, 2033 (the "Abatement Termination Date") or (ii) the date on which the Agency no longer has a leasehold interest in the Land and the Improvements, the Company shall make payment in lieu of real estate taxes (the "PILOT Payments"), as follows:

## Definitions

X = the then current assessed value of Land and Improvements from time to time.

PILOT Commencement Date = the Taxable Status Date of the Town immediately following the date hereof.

Normal Tax Due = those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Babylon (including any existing incorporated village or any village which may be or may have been incorporated after the date hereof, within which the Project is wholly or partially located) which are or may be imposed for special improvements or special district improvements, which the Company would pay without exemption.

Tax Year = the Tax Year of the Town commencing each December 1 and ending the following November 30, commencing December 1, 2019 with the first Tax Year running from December 1, 2020 and ending the following November 30, 2021.

## Payment Tax Year

1	40.0% Normal Tax Due on X
2	45.0% Normal Tax Due on X
3	50.0% Normal Tax Due on X
4	55.0% Normal Tax Due on X
5	60.0% Normal Tax Due on X
6	65.0% Normal Tax Due on X
7	70.0% Normal Tax Due on X
8	75.0% Normal Tax Due on X
9	80.0% Normal Tax Due on X
10	85.0% Normal Tax Due on X
11	90.0% Normal Tax Due on X
12	95.0% Normal Tax Due on X
13 and thereafter	100% Normal Tax Due on X

The tax benefits provided for in this subsection (d) shall be deemed to commence on the PILOT Commencement Date. In no event shall the Company be entitled to receive real property tax benefits due to the Project under this Lease Agreement for a period longer than the period set forth in the formula immediately above. Notwithstanding the foregoing schedule, the Company further covenants and agrees that for any period that the Agency continues to hold a leasehold interest in the Land and Improvements after February 28, 2033, the Company shall pay 100% of the Normal Tax Due on X together with any special assessment and services charges relating to

the Facility whichever may be imposed for special district improvements in accordance with the provisions of this Section 5.1.

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

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

(g) The Company shall be permitted to file a grievance, protest or demand for judicial review protesting the existing assessment of the Land and Improvements extant on the date of this Lease Agreement, provided such grievance, protest or demand for judicial review shall be settled or resolved prior to December 1, 2020. Except as permitted in the first sentence of this Section 5.1(g), neither the Company nor any owner of the Land and Improvements shall file a grievance, protest or demand for judicial review protesting the present or future assessment of the Land and Improvements for the period commencing on the date hereof until December 1, 2025, and except as permitted in the first sentence of this Section 5.1(g), the filing of such a grievance or protest on or prior to December 1, 2025 shall be a default under Section 10.1 of this Lease Agreement, and as long as provisions of this Section 5.1 are in effect, the Agency and the Company agree that (i) the Company is the owner of the Land and Improvements and has the right to file grievances and protests and institute judicial review of the current and any future assessment of the Land and Improvements pursuant to, and, subject to the requirements of, Articles 5 and 7 of the Real Property Tax Law or any other applicable law as the same may be amended from time to time; (ii) the Company shall have full authority to file grievances, protests and/or demands for judicial review, protesting the assessment of the Land and Improvements solely with respect to tax years commencing December 1, 2026 and thereafter; and (iii) the Company shall accept as valid any and all final assessments placed on the Land and Improvements by the Assessor of the Town of Babylon after the final determination of any grievance, protest, or judicial review contemplated under clause (ii) above. In connection with and subject to the foregoing, the Agency, as holder of a leasehold interest in the Land and Improvements, will reasonably cooperate with the Company in the filing of any grievance or protest of any present or future assessment permitted hereunder. The Agency shall provide or cause to be provided to the Company, in the same manner and at the same time as if the Company were a taxpayer (or within fifteen calendar days thereof), notice of any proposed change in assessment of the Land and Improvements. If the assessment of the real estate with respect to the Land and Improvements, including any additions thereto, is reduced as a result of any such grievance, protest or judicial review described above so that the Company would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Jurisdictions, the Company shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid

pursuant to this Lease Agreement. In such event, the Company's sole relief and remedy shall be the receipt of a credit after December 1, 2026 against prospective payments in lieu of taxes remaining to be paid to the Agency pursuant to this Lease Agreement measured from the date the credit is granted in the amount, within the below described limits, equal to the refund or refunds of taxes to the respective Taxing Jurisdictions that the Company would be entitled to receive if the Agency did not have a leasehold interest in the Land and Improvements and any additions thereto. In addition, to the extent that the Company or prior owner of the Land and Improvements has been granted a refund or refunds of real property taxes paid prior to the date hereof and all or any portion of such refund or refunds remains to be paid by the Taxing Jurisdiction to the Company, on or after the date hereof, such refund shall be applied as a credit against PILOT Payments remaining to be paid on or after December 1, 2026. Provided however, that (i) such credit shall be available and payable only to the Company during the Company's occupancy of the Land and Improvements under this Lease Agreement and (ii) the amount of such credit shall not exceed aggregate payments in lieu of taxes to be paid under this Lease Agreement measured from the date of the settlement of such grievance or protest or the date the judgment respecting such credit is entered. In no event shall the Company have any claim against funds of the Agency with respect to credits provided for in this paragraph (g).

(h) Provided the Company shall have been in compliance with Section 5.1(g) hereof, the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold interest in the Land and Improvements with respect to any proposed assessment or change in assessment with respect to the Land and Improvements by any of the Taxing Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

(i) To the extent the Facility is declared to be subject to real property taxation or assessment by a final judgment of a court of competent jurisdiction, or pursuant to an amendment to the Act, or other legislative change or otherwise, the obligations of the Company to make payments in lieu of real estate taxes under this Section 5.1 shall, to such extent, be null and void.

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

(j) If the Company enters into any written agreement with any Taxing Jurisdiction providing for payments in lieu of taxes by the Company to any or all of them, so much of this Section 5.1 as it relates to the Taxing Jurisdiction with which the Company has entered into said written agreement shall be automatically modified to reflect the terms of any such written agreement, and any such written agreement shall be deemed to be incorporated into this Section 5.1 by reference and made a part hereof as an amendment or modification hereof. Should the Company receive any real property tax exemption from any of the Taxing Jurisdictions, this Section 5.1 shall automatically be modified to reflect the extent of such exemption.

(k) Subsequent Alterations and Improvements: If, at any time after completion of the Project, the Company shall make any alterations of or additions to the Land and Improvements, the aggregate value of which in each instance shall equal or exceed \$50,000 (the "Additional Improvements"), the Company shall deliver written notice to an Authorized Representative of the Agency of same within thirty (30) days after the completion thereof. The Agency shall thereupon request that the Improvements constituting a part of the Land and Improvements (including any such Additional Improvements) be reassessed by the appropriate officer or officers of the Town and the Company shall make additional payments in lieu of taxes equal to:

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

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

(l) Withdrawal of Real Estate Tax Abatements: The Company understands and agrees that the Company is required to pay or cause to be paid, as additional payments in lieu of real estate taxes, the amount of taxes that the Company would have been required to pay as the owner of the Land and Improvements (assuming that the Agency did not have a leasehold interest therein) for that portion of the Land and Improvements, if any, utilized or occupied by any Person other than the Company, the Sublessee or any Affiliate thereof for so long as such utilization or occupation shall continue. The Company hereby represents to the Agency that no portion of the Land and Improvements is utilized or occupied or is intended to be utilized or occupied by Persons other than the Company, the Sublessee or any Affiliate thereof. The Company agrees that it shall immediately notify in writing the Agency or cause said written notice to be given in the event that there shall be any change in the portion of the Land and Improvements utilized or occupied by any Person other than the Company, the Sublessee or Affiliates thereof. The Company understands and agrees that in such event, unless the Agency in its sole discretion shall determine otherwise, the amounts payable by the Company as additional payments in lieu of taxes shall be adjusted to an amount equal to the amount of taxes that the Company would have been required to pay as the owner of the Land and Improvements (and assuming that the Agency did not have a leasehold interest therein) for that portion of the Land and Improvements utilized or occupied by Persons other than the Company, the Sublessee or Affiliates thereof for so long as such utilization or occupation shall continue.

Commencing as of the date on which the Facility is not used in accordance with the Act and this Lease Agreement or upon the occurrence of an Event of Default under this Lease Agreement, the Company shall be required to make payments in lieu of real estate taxes on the Land and Improvements in such amounts as would result from taxes levied on the Land and Improvements if the Land and Improvements were owned by the Company and the Agency did not have a leasehold interest therein. For purposes of the determination of such payments in lieu of real estate taxes, the tax rate shall be the rate then in effect as shown on the records of the proper Town department.

(m) Survival of Obligations. The obligations of the Company under this Section 5.1 shall survive the termination or expiration of this Lease Agreement for any reason whatsoever.

The Agency, in its sole discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes set forth in this Section 5.1, for good cause shown.

(n) Additional Covenants:

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

(ii) In the event there shall have been a Base Employment Reduction Percentage greater than thirty percent (30%) (the "Applicable Base Employment Reduction Percentage"), due to a Non-Relocation Reduction occurring in any Annual Period, PILOT Payments due under Section 5.1 (d) hereof for the Tax Year immediately following such Annual Period shall equal the amount set forth in the schedule contained in Section 5.1 (d) for the appropriate Tax Year (the "Applicable PILOT Payment") plus an amount equal to the product of (A) the Applicable PILOT Payment, and (B) the Applicable Base Employment Reduction Percentage.

Section 5.2 Sales Tax Exemption.

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

(b) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, the Sublessee, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company and the Sublessee, subject to the terms and conditions of this Lease Agreement, to

act as its agents in connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company, the Sublessee and their Agents pursuant to this Lease Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

- (i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) May 29, 2021, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company and the Sublessee received the Maximum Sales Tax Savings Amount.
- (ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company and/or the Sublessee are in default under this Lease Agreement until such default is cured to the satisfaction of the Agency.
- (iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.
- (iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company or the Sublessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company or the Sublessee), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company or the Sublessee at the Facility.
- (v) The Sales Tax Exemption shall not be used for any Ineligible Item.
- (vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company and the Sublessee, without the prior written consent of the Agency.
- (vii) By execution by the Company of this Lease Agreement and by the agreement and acceptance by the Sublessee of this Lease Agreement, the Company and the Sublessee agree to accept the terms hereof and represent and warrant to the Agency that the use of the Sales Tax Exemption by the Company, the Sublessee or by any Agent is strictly for the purposes stated herein.
- (viii) Upon the Termination Date, the Company, the Sublessee and each Agent shall cease being agents of the Agency, and the Company and the Sublessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

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

(d) **Appointing Agents.** The Company and the Sublessee have the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company or the Sublessee choose including but not limited to the individuals and entities described on Exhibit E attached hereto (collectively, the "Agent"). The Company and the Sublessee shall have the right to amend Exhibit E from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. To seek the appointment of an "Agent" for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, the Company or the Sublessee, as applicable, must complete the following steps:

(i) For each Agent, the Company or the Sublessee, as applicable, must complete and submit Form ST-60 to the Agency. The foregoing is required pursuant to the GML Section 874(9) and Form ST-60 and the regulations relating thereto which require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity.

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

(iii) The Company and the Sublessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement. All contracts entered into by the Company or the Sublessee, as applicable, and all subagents thereof as agent for the Agency shall include the language contained within Exhibit G hereto. Failure by the Company, the Sublessee and/or any subagent thereof to include such language shall disqualify the agent status and sales tax exemptions derived by virtue of this Lease Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.

(e) Form ST-60 Not an Exemption Certificate. The Company and the Sublessee acknowledge that the executed Form ST-60 designating the Company, the Sublessee or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. None of the Company, the Sublessee, or any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, THE SUBLESSEE OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) Form ST-123 Requirement. As agents of the Agency, the Company and the Sublessee each agree that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company, the Sublessee or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company or Sublessee, as project operator of the Agency, was the purchaser. The Company and the Sublessee shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

(h) Sales Tax Registry Filing Requirement. No later than February 1st of each year, the Company and the Sublessee shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit H, which accounts for all Sales Tax Savings realized by the Company, the Sublessee and each Agent during the prior annual period ending on the preceding

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

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

(i) The Company and the Sublessee each covenant and agree to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Company and the Sublessee each acknowledge and agree that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company and the Sublessee, State Sales Tax Savings taken or purported to be taken by the Company, the Sublessee, any Agent or any other person or entity acting on behalf of the Company or the Sublessee to which the Company or the Sublessee is not entitled or which are in excess of the Maximum Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, the Sublessee, any Agent or any other person or entity acting on behalf of the Company or the Sublessee failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company and the Sublessee shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company and the Sublessee under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(j) Subject to the provisions of subsection (i) above, in the event that the Company, the Sublessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company and the Sublessee shall promptly deliver notice of same to the Agency, and the Company and the Sublessee shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company, the Sublessee or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Company and the Sublessee, the Company and the Sublessee shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company, the Sublessee and any Agent, and require all appropriate officers and employees of the Company and the Sublessee to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company, the Sublessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company and/or the Sublessee under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Reserved.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company and the Sublessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees if there shall occur a Recapture Event (as defined below) after the date hereof, the Company and the Sublessee shall pay to the Agency as a return of public benefits conferred by the Agency, the following amounts (the "Recapture Benefits"):

(i) one hundred percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first four (4) years after the date hereof;

(ii) eighty percent (80%) of the Benefits if the Recapture Event occurs during the period from the fifth (5<sup>th</sup>) year through and including the eighth (8<sup>th</sup>) year after the date hereof;

(iii) sixty percent (60%) of the Benefits if the Recapture Event occurs during the sixth (6<sup>th</sup>) year after the date hereof;

(iv) forty percent (40%) of the Benefits if the Recapture Event occurs during the seventh (7<sup>th</sup>) year after the date hereof; or

(v) twenty percent (20%) of the Benefits if the Recapture Event occurs during the eighth (8<sup>th</sup>) year after the date hereof.

(b) As used in this Section 5.4, the term "Benefits" shall mean, collectively:

(i) all real estate tax benefits which have accrued to the benefit of the Company and the Sublessee commencing from and after the Closing Date, and during the period of time that the Agency maintains a leasehold interest in the Company Facility (the "Real Property Tax Abatements"), such tax benefits to be computed by subtracting the payments in lieu of taxes paid pursuant to Section 5.1 from those payments which the Company and the Sublessee would have been required to pay during the term of this Lease Agreement (within the meaning of Section 5.2 hereof) had the Town determined the amount of such real estate taxes

as would be due if the Agency had not had a leasehold interest in the Facility during such term; and

(ii) all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Lease Agreement, including, but not limited to, any exemption from any applicable state or local sales and use tax and filing and recording fees accruing from and after the date hereof;

which Recapture Benefits from time to time shall, upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company, be payable directly to the Agency or the State, if so directed by the Agency, within ten (10) days after such notice.

(c) The term "Recapture Event" shall mean any of the following events:

(i) The Company or the Sublessee shall have liquidated its operations and/or assets (absent a showing of extreme hardship);

(ii) The Company or the Sublessee shall have ceased all or substantially all of its operations at the Company Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;

(iii) The Company or the Sublessee shall have transferred all or substantially all of their employees within the Town to a location outside of the Town through no force majeure event;

(iv) The Company or the Sublessee shall have subleased all or any portion of the Company Facility in violation of the limitations imposed by Section 9.3 of this Lease Agreement, without the prior written consent of the Agency;

(v) The Company or the Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Company Facility; or

(vi) Base Employment Reduction Percentage shall be greater than fifteen percent (15%) due to a Relocation Reduction occurring with respect to an Annual Period.

(d) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Company or the Sublessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or the Sublessee.

(e) The Company covenants and agrees to furnish the Agency with (1) the employment report required under Sections 8.11 and 8.12 and the additional annual report required under Section 8.5, all within the timeframes referenced therein, and (2) written notification upon any Recapture Event or disposition of the Facility or any portion thereof made within twelve (12) years of the PILOT Commencement Date, which notification shall set forth the terms of such Recapture Event and/or disposition.

(f) In the event any payment owing by the Company and the Sublessee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(g) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

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

(i) The provisions of this Section 5.4 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

## ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

### Section 6.1 Maintenance and Modifications of Company Facility by Company.

(a) The Company shall not abandon the Company Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the Company Facility outside of the jurisdiction of the Agency and shall (i) keep the Company Facility or cause the Company Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Company Facility; and (iii) operate the Company Facility in a sound and economic manner.

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

Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Company Facility (which may be attached or affixed to the Company Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Company Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Company Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges. Subject to the Sales Tax Exemption and the Real Property Tax Abatements as provided hereunder, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Company Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Company Facility or any part or component thereof, or the rental or sale of the Company Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Company Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Company Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term. The Agency shall promptly forward to the Company any notice, bill or other statement received by the Agency concerning any Imposition.

In the event the Facility is exempt from Impositions (other than real estate taxes in respect of which amounts are payable under Section 5.1 hereof) solely due to the Agency's leasehold interest in the Facility, the Company shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Facility if the Agency did not have a leasehold interest in the Facility.

Section 6.4 Insurance Required. (a) Notwithstanding any other provision of any agreement to the contrary, at all times throughout the Lease Term, including without limitation during any period of construction or reconstruction of the Company Facility, the Company shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company or the Sublessee, including, without limitation:

(i) During any period of construction, renovation, improvement or reconstruction of the Company and to the extent not covered by the General Liability insurance and/or Umbrella Liability Insurance referred to below, Owners & Contractors Protective Liability insurance for the benefit of the Company and the Agency in a minimum amount of \$2,500,000 aggregate coverage for personal injury and property damage;

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

(iii) General liability insurance and/or Umbrella Liability Insurance including contractual liability coverage in accordance with customary insurance practices for similar operations with respect to the Company Facility and the business thereby conducted in a minimum amount of \$2,500,000 per occurrence per aggregate, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 8.2 hereof, to the extent not commercially reasonably available to the Company), and (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate, **provided, however**, that at least \$500,000 is effected by General Liability insurance policy, any such insurance shall not contain any provisions for a deductible or retention amount in excess of such deductibles or retention amounts as are customarily provided by other enterprises of like size and type of that of the Company;

(iv) (Reserved).

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

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

#### Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4(a) shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) rated "A-/X" or better by AM. Best & Co., or (ii) approved by the Agency. The Agency may change such rating requirements if reasonably required by substantial changes in insurance industry premiums, risks or coverage provided that such change does not impose a substantial hardship of financial burden on the Company in comparison to the ratings of carriers typically providing coverage for similar business and buildings in the Town. Each of the policies or binders evidencing the insurance required above to be obtained shall designate (except in the case of workers' compensation, Builder All Risks, and property damage insurance) the Company and the Agency as additional insureds as their respective interests may appear, and, with respect to Builders All Risks Insurance designate the Agency as its interest may appear.

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

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

(ii) provide that all insurance proceeds with respect to loss or damage to the Company Facility be endorsed and made payable to the Company;

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

(iv) provide that in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or the Sublessee or any other Person and shall insure the Agency regardless of, and any losses

shall be payable notwithstanding any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Company or any other Person; the operation or use of the Company Facility for purposes more hazardous than permitted by the terms of the policy; any foreclosure or other proceeding or notice of sale relating to the Company Facility; or any change in the title to or ownership of all or any portion of the Company Facility;

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

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

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

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

(c) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be paid to the Company and applied in accordance with Section 6.6 hereof.

(d) On the date hereof, the Company shall deliver or cause to be delivered to the Agency, a broker's certificate of coverage, certificate of liability insurance, evidence of property insurance and certificates or other evidence of other required insurance, and as soon as possible thereafter, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section 6.5. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Lease Agreement.

(e) The Company shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section 6.5. The Company shall

not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 6.5 would or might be suspended or impaired.

(f) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED IN THIS ARTICLE VI, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTERESTS OF THE COMPANY, THE SUBLESSEE OR ANY OTHER PERSONS.

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

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

Section 6.8 Advances by Agency. In the event the Company fails to make any payment or perform or observe any obligation required of it under this Lease Agreement, the Agency, after first notifying the Company of any such failure on its part (except that no prior

notification of the Company shall be required in the event of an emergency condition that, in the reasonable judgment of the Agency, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Lease Agreement or any other Transaction Document to which the Agency is a party, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, from the date advanced, the Company will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of Rental Payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 6.9 Compliance with Law. The Company agrees that it will, throughout the term of this Lease Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 8.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Company (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel satisfactory to the Indemnified Party.

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

ARTICLE VII  
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1    Damage or Destruction of the Company Facility.

(a)    If the Company Facility or any part or component thereof shall be damaged or destroyed (in whole or in part) (a “Loss Event”) at any time during the Lease Term:

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

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

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

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

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

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

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

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

(iii)    the Company Facility will be subject to no Liens, other than Permitted Encumbrances; and

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

(c)    All such repair, replacement, rebuilding, restoration or relocation of the Company Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in

accordance with the terms of the applicable contracts and shall automatically become a part of the Company Facility as if the same were specifically provided herein.

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

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

#### Section 7.2 Condemnation.

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VIII SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

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

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

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

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

(d) For the purposes of this Section 8.2, neither the Company nor the Sublessee shall be deemed employees, agents or servants of the Agency or a person under the Agency's control or supervision.

**Section 8.3 Company to Maintain Its Existence.** The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, except with consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

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

**Section 8.5 Agreement to File Annual Statements and Provide Information.** The Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, by January 30 of each year during the term of this Lease Agreement, commencing January 30, 2020, the Company shall provide the Agency with a certified statement and documentation in the form attached hereto as Exhibit J (i) enumerating the jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of jobs created and/or retained. This information shall be in addition to the information required to be provided to the Agency pursuant to Sections 8.11 and 8.12. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authorities Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. At the request of the Agency, the Company shall cause any and all Sublessee, including but not limited to the Sublessee, at the Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee to

enter into a Tenant Agency Compliance Agreement (except the Sublessee, which shall enter into the Agency Compliance Agreement).

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

Section 8.7 Compliance with Orders, Ordinances, Etc.

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

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

Section 8.8 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any

such item or items, the Company Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

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

Section 8.10 Employment Opportunities; Notice of Jobs. The Company shall ensure (and shall cause the Sublessee to agree) that all employees and applicants for employment by the Company or the Sublessee or their Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Company Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by Workforce Innovation and Opportunity Act (PL 113-128), in which the Company Facility is located (collectively, the "Referral Agencies"). The Company also agrees, and shall cause the Sublessee to agree, that they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 Calculation of Eligible Employees.

(a) Annually, by January 30 of each year during the term of this Lease Agreement, commencing on January 30, 2020, the Company shall submit to the Agency an employment report relating to the period commencing January 1 of the previous year and ending December 31 of such year, except that the first employment report shall relate to the period commencing the Closing Date and ending December 31, 2019, substantially in the form of Exhibit O hereto, certified as to accuracy by the Authorized Representative of the Company.

(b) In connection with the delivery of Exhibit O hereto the Company shall calculate the number of Eligible Employees during an Annual Period. The number of Eligible Employees during an Annual Period (each such Eligible Employee, an "Annual Period Eligible Employee", and collectively, the "Annual Period Eligible Employees") shall be calculated by the Company on the basis of the aggregate sum of the numbers of Eligible Employees employed on the last payroll date for each of the months (including any partial month) during such Annual Period divided by twelve (except that in the first Annual Period, the divisor will be the number of months, including any partial month, contained in such Annual Period), based upon the employment report set forth in Section 8.11 (a) hereof.

Section 8.12 Employment Information. The Company agrees that, upon request of the Agency, the Company shall furnish to the Agency such information as the Agency shall reasonably request as necessary to verify or confirm the information reported in Exhibit O. Upon request by the Agency, the Company shall submit to the Agency copies of each Form EEO-1 or the equivalent, with respect to the facilities of the Company and its Affiliates within the Town, as are required to be prepared and filed with Federal or State authorities pursuant to applicable law. In addition, the Company hereby authorizes any private or governmental entity, including but not limited to the New York State Department of Labor ("DOL"), to release to the Agency and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under DOL's control which is pertinent to the Company and the Company's employees.

Section 8.13 Compensation and Expenses of the Agency. The Company shall pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's Transaction Counsel and the Agency's general counsel in performing services for the Agency in connection with this Lease Agreement or any other Transaction Document.

Section 8.14 Retention of Leasehold Interest in the Facility; Grant of Easements; Release of Land.

(a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of its leasehold interest in the Facility or any part thereof or interest therein during the term of this Lease Agreement, except as set forth in Sections 6.2, 7.1 and 10.2 hereof, without the prior written consent of the Company and any purported disposition without such consent shall be void.

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

needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not destroy the means of ingress thereto and egress therefrom.

Section 8.15 Recording and Filing. A memorandum of this Lease Agreement shall be recorded by the Company in the appropriate office of the Register of the County of Suffolk, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 8.16 Further Encumbrances. The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Company or the Sublessee in the Facility or this Lease Agreement or the Sublease Agreement, respectively, except for Permitted Encumbrances.

## ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

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

### Section 9.2 Removal of Facility Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Facility Equipment. In any instance where the Company determines that any item of Facility Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, may remove such items from the Company Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not

materially impair the operation of the Company Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

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

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

### Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Company Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in substantially the form attached hereto as Exhibit K. Any assignment or sublease shall be on the following conditions, as of the time of such assignment:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, which consent shall not be unreasonably withheld, conditioned or delayed subject to the dates of the Agency's board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of the Lease Agreement (or of any other Transaction Document to which the Company is a party) shall be adversely affected thereby;

(v) with respect to any subletting in part, the term of each such sublease shall not exceed five (5) years and, at any given date, no more than an aggregate of twenty percent (20%) of the Land and Improvements shall be subleased by the Company;

(vi) the Facility shall continue to constitute a “project” as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;

(vii) such sublease shall in no way diminish or impair the Company’s obligation to carry the insurance required under Section 6.4 of this Lease Agreement and the Company shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease; and

(viii) any sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency.

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

(b) If the Agency shall so request, as of the purported effective date of any assignment pursuant to subsection (a)(1) of this Section 9.3, the Company at its sole cost and expense shall furnish the Agency with opinions, in form and substance satisfactory to the Agency, (i) of Transaction Counsel as to item (vi) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

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

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

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

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

(e) If the Facility or any part thereof is sublet or occupied by any Person other than the Company or the Sublessee, the Agency, in the event of the Company’s default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from any sublessee or occupant during the continuance of any such default. In case of such event, the

Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Lease Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Company from the further performance of the covenants herein contained on the part of the Company.

(f) The Company covenants and agrees that it shall not, without the prior written consent of the Agency (which consent shall be at the Agency's sole and absolute discretion), amend, modify, terminate or assign, or to suffer any amendment, modification, termination or assignment of, the Sublease Agreement.

(g) The limitations in this Section 9.3 on assignment or transfer of this Lease Agreement and subletting in whole or in part of the Facility shall have equal application to any assignment or transfer of the Sublease Agreement and any sub-subletting in whole or in part of the Facility.

#### Section 9.4 Merger of Agency.

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

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

### ARTICLE X EVENTS OF DEFAULT AND REMEDIES

#### Section 10.1 Events of Default Defined.

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

- (i) the failure by the Company to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof;
- (ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (h) or (j), 5.1, 5.2, 6.3, 6.4, 6.5, 8.2, 8.4, 8.11, 9.3, 10.4 and 10.6 and Article XIII hereof;

- (iii) the failure by the Company to pay or cause to be paid PILOT Payments or the Recapture Benefits, in each case on the dates due;
- (iv) the occurrence and continuation of a Recapture Event;
- (v) any representation or warranty made (i) by the Company or the Sublessee in the Project Application Information submitted to the Agency for approval of the Project or the transactions contemplated by this Lease Agreement, or (ii) by the Company herein or the Sublessee in any other Transaction Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made;
- (vi) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency;
- (vii) the dissolution or liquidation of the Company or the Sublessee; or the failure by any of the Company or the Sublessee to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by any of the Company or the Sublessee generally to pay its debts as they become due; or an assignment by the Company or the Sublessee for the benefit of creditors; or the commencement by the Company or the Sublessee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company or the Sublessee (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company or the Sublessee as the debtor, or such case or proceeding is consented to by the Company or the Sublessee, or remains undismissed for forty (40) days, or the Company or the Sublessee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company or the Sublessee for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;
- (viii) the removal of the Facility, or any portion thereof, outside the Town of Babylon, New York, without the prior written consent of the Agency;
- (ix) the Company, the Sublessee or any Affiliate shall become a Prohibited Person;

(x) the Base Employment Reduction Percentage shall be greater than thirty percent (30%) due to a Non-Relocation Reduction occurring in each of two consecutive Annual Periods;

(xi) at the sole and unlimited discretion of the Agency, the Base Employment Reduction Percentage shall be greater than fifteen percent (15%) due to a Relocation Reduction occurring in an Annual Period or continuing from a prior Annual Period;

(xii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing;

(xiii) a failure of the Sublessee to fulfill its obligations under the Agency Compliance Agreement shall have occurred and be continuing; or

(xiv) an Event of Default under the Sublease Agreement shall have occurred and be continuing.

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

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

## Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recapture Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(ii) terminate this Lease Agreement and the Company Lease, reconvey the Facility Equipment to the Company and terminate the Sales Tax Exemption authorization. The Agency shall have the right to execute appropriate lease termination documents with respect to the Company Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such lease termination documents;

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

(iv) suspend or terminate its authorization hereunder and pursuant to any Sales Tax Agent Authorization Letter with respect to the Sales Tax Exemption;

(v) require the Company to make payments in lieu of real estate taxes under Section 5.1 hereof with respect to the Facility in an amount equal to that amount which the Company would otherwise be required to pay if the Agency did not have a leasehold interest in the Facility; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Section 11.3 Conveyance on Termination.

(a) At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1, if applicable, and upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Facility Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Company Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

(b) The sale and conveyance of the Agency's right, title and leasehold interest in and to the Company Facility shall be effected by the execution and delivery by the Agency to the Company of the Assignment to Company (an unexecuted copy of which is attached hereto as Exhibit L and by this reference made a part hereof). The sale and conveyance of the Agency's right, title and interest in and to the Facility Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit M and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease and Project Agreement (an unexecuted copy of which is attached hereto as Exhibit N and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfers of title. In the event of a termination of the Company Lease and this Lease Agreement resulting from the exercise by the Agency of its remedies under Section 10.2 hereof, the Agency shall have the right to execute an appropriate Assignment to Company, Bill of Sale to Company and Termination of Lease and Project Agreement (collectively, the "Termination Documents") with respect to the Company Facility and to place the same on record in the Suffolk County Clerk's

office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of the Termination Documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to execute such Termination Documents, together with all affidavits, questionnaires and other documentation necessary to accomplish the recording of such Termination Documents.

(c) The Company agrees to prepare the Assignment to Company and/or the Bill of Sale to Company and/or the Termination of Lease and Project Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Agency's interest in the Company Facility or any portion thereof is to be conveyed to the Company.

(d) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.3.

(e) This Lease Agreement shall survive the transfer of the Company Facility to the Company pursuant to this Section 11.3 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 14.8 hereof.

(f) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 14.8 hereof, the Agency shall upon the request of the Company, execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

(g) Upon conveyance of the Agency's interest in the Facility pursuant to this Section 11.3, this Lease Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Sections 5.1 (until such time as the Company shall again pay taxes as the record owner of the Land and Improvements), 5.4, 8.2, 14.4, 14.11 and Article XII hereof shall survive such termination.

## ARTICLE XII LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Company or the Agency and the Company on the Company Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof. Notwithstanding the foregoing, as between the Agency and the Company, the Agency shall have the ability to enforce the remedies in Section 10.2 hereof against the Company.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Company Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and

interest on the Loan, in each case in accordance with the provisions attached hereto as Exhibit D. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

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

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

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

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

## ARTICLE XIII ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company. Except as otherwise shown on Exhibit I attached hereto, the Company hereby represents and warrants to the Agency that:

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

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

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

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

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

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

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

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human

exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Facility.

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

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

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

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

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the Company Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Company Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Company Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Company Facility that could reasonably be expected to cause the Company Facility or any part thereof to be subject

to any restrictions on the ownership, occupancy, transferability or use of the Company Facility under any Environmental Law. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Company Facility or real property or bodies of water adjoining or in the vicinity of the Company Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

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

(f) If at any time the Agency obtains any notice or information that the Company or the Company Facility, or the use or operation thereof or the Project Work may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Company Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Company Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Company Facility in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions

required by any Environmental Law, in accordance with Section 13.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Company Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

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

#### ARTICLE XIV MISCELLANEOUS

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

IF TO THE AGENCY:

Town of Babylon Industrial Development Agency  
47 West Main Street, Suite 3  
Babylon, New York 11702  
Attention: Chairman

WITH A COPY TO:

John Braslow, Esq.  
816 Deer Park Avenue  
North Babylon, New York 11703

AND

Barclay Damon LLP  
80 State Street  
Albany, New York 12207  
Attention: M. Cornelia Cahill, Esq.

IF TO THE COMPANY:

Wyan Group LLC  
942 Lafayette Avenue  
Brooklyn, New York 11221  
Attention: Howard Friedman

WITH A COPY TO:

Konner Teitelbaum & Gallagher  
466 Seventh Avenue, 12<sup>th</sup> Floor  
New York, New York 10018  
Attention: Brian Gallagher, Esq.

IF TO THE SUBLESSEE:

A. F. Supply Corp.  
942 Lafayette Avenue  
Brooklyn, New York 11221  
Attention: Howard Friedman

WITH A COPY TO:

Konner Teitelbaum & Gallagher  
466 Seventh Avenue, 12<sup>th</sup> Floor  
New York, New York 10018  
Attention: Brian Gallagher, Esq.

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

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

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

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

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

Section 14.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 14.7 List of Additional Facility Equipment; Further Assurances. Upon the Completion Date with respect to the Company Facility and the installation of all of the Facility Equipment therein, the Company shall prepare and deliver to the Agency, a schedule listing all of the Facility Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Facility Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 14.8 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.10 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

Section 14.11 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement. The provision of this Lease Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Lease Agreement.

Section 14.12 Non-Discrimination. At all times during the maintenance and operation of the Facility, the Company shall not discriminate, or permit the Sublessee to discriminate, against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for

training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

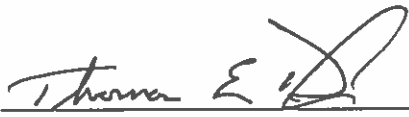
Section 14.13 Recourse Under This Lease Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Lease Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Lease Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the Town and neither the State nor the Town shall be liable on any obligation so incurred, by any such obligation shall be payable solely out of amounts payable to the Agency by the Company hereunder.

Section 14.14 Prior Agreements Superseded. Except for the Transaction Documents, this Lease Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Facility.

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


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

TOWN OF BABYLON INDUSTRIAL  
DEVELOPMENT AGENCY


By:   
Thomas E. Dolan  
Chief Executive Officer

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

On the 24<sup>th</sup> day of May in the year 2019, before me, the undersigned, a notary public in and for the State of New York, personally appeared Thomas E. Dolan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

  
Notary Public  
LYNN A. ARAMANI  
Notary Public, State of New York  
No. 01AR5071444  
Qualified in Suffolk County  
Commission Expires January 13, 2023

WYAN GROUP LLC

By:   
Howard Friedman  
Member

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

On the 29<sup>th</sup> day of May in the year 2019, before me, the undersigned, a notary public in and for the State of New York, personally appeared Howard Friedman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

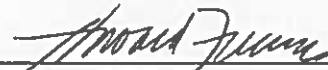
  
Notary Public

MICHAEL A. GOULD  
Notary Public, State of New York  
No. 02GO4832756  
Qualified in New York County  
Commission Expires June 30, 2019 <sup>23</sup>

AGREEMENT AND ACCEPTANCE:

A. F. Supply Corp., as Sublessee, hereby agrees to and accepts the foregoing Lease Agreement as of the day and year first above written. A. F. Supply Corp., as Sublessee, hereby further accepts as its own joint and several obligation all of the obligations of the Company in the foregoing Lease Agreement, including but not limited to those obligations of the Company set forth in Article V and Article XIII.

A. F. SUPPLY CORP.

By:   
Howard Friedman  
President

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

On the 29th day of May in the year 2019, before me, the undersigned, a notary public in and for the State of New York, personally appeared Howard Friedman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

  
Notary Public

MICHAEL A. GOULD  
Notary Public, State of New York  
No. 02GO4632756  
Qualified in New York County  
Commission Expires June 30, 2023 23