

## MODEL PROJECT AGREEMENT

This Agreement, made and entered into as of [\_\_\_\_\_], 20[\_\_\_] (this “**Agreement**”), by and between the **COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “**Agency**”), having its principal office at 148 Martine Avenue, White Plains, NY 10601, and [\_\_\_\_\_], a [\_\_\_\_\_] duly organized and existing under the laws of the State of [\_\_\_\_\_] (the “**Company**”), having an office [\_\_\_\_\_].

### WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 788 of the Laws of 1976 of the State of New York, as amended by Chapter 564 of the Laws of 1983 (together with the Enabling Act, the “**Act**”) for the benefit of the County of Westchester and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company for a commercial “project”, within the meaning of the Act (the “**Project**”), to be located within the territorial boundaries of the [Town/Village/City] of [\_\_\_\_\_] (the “[**Town/Village/City**]”) at premises located at [\_\_\_\_\_] (the “**Land**”); and

WHEREAS, the Project shall consist of the Agency taking title, possession or control (by deed, lease, license or otherwise) of the Land, and construction, improving, maintenance and equipping upon the Land of a facility consisting of [\_\_\_\_\_]

[\_\_\_\_\_] (such improvements to the Land, the “**Improvements**”, and together with the Land, the “**Facility Realty**”), to be leased by the Agency to the Company (or to an affiliate of the Company), and used by the Company (or an affiliate of the Company), all as more fully described in the Application

submitted on behalf of the Company to the Agency in respect of the Project (the “**Application**”), all subject to the terms and conditions of this Agreement and the other Project Documents (as hereinafter defined); and

WHEREAS, the Company has advised the Agency that the financial assistance requested by the Company is necessary in order for the Project to be economically viable and to enable the Company to achieve and provide the Public Benefits, as hereinafter defined; and

WHEREAS, in order to induce the Project and to enable the Company to achieve and provide the Public Benefits, the Agency has determined to provide to the Company the following financial assistance (within the meaning of the Act) in connection with the Project (the “**Financial Assistance**”):

- a) Exemptions from sales and use taxes in the acquisition and installation of materials and equipment for the construction and equipping of the Project Facility, as hereinafter more fully described, in the amount not to exceed the Sales Tax Benefits Limit, as hereinafter defined; and
- b) Exemptions from mortgage recording tax on mortgages made in connection with the Initial Acquisition and Construction of the Facility (as hereinafter defined), in an amount not to exceed \$[\_\_\_\_\_]; and
- c) [An abatement or reduction in Real Property Taxes to the extent provided in the PILOT Agreement hereinafter defined].

WHEREAS, the Agency has determined, based upon the Application of the Company and other representations made by the Company, that undertaking the Project and providing financial assistance to the Company through a straight-lease transaction (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the County of Westchester and the State of New York and improve their standard of living, (ii) will not result in the removal of an industrial, manufacturing or commercial plant of the Company or any occupant of the Project from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any occupant of the Project except as permitted by the Act, and (iii) is authorized by the Act and will be in furtherance of the policy of the State of New York as set forth therein; and

WHEREAS, the sole local municipalities in which a part or parts of the Project is, or is to be, located is the [Town/Village/City]; and

WHEREAS, pursuant to sections 859-a and 923-a as well as Article 18-A of the New York State General Municipal Law, the Agency provided notice to the [Town/Village/City] and affected tax jurisdictions and held a public hearing on the [\_\_\_\_] day of [\_\_\_\_\_], 20\_\_, at [\_\_\_\_\_, \_\_\_\_\_], New York, in connection with the Project; and

WHEREAS, to facilitate the Project, the Agency and the Company simultaneously with the execution and delivery of this Agreement, are entering into a “straight-lease transaction” within the meaning of the Act in which (i) the Company will lease the Facility Realty to the Agency pursuant to a Company Lease Agreement dated as of the date hereof (the “**Company Lease**”) and (ii) the Agency will sublease its interest in the Facility Realty and lease its interest in any Project Equipment to the Company pursuant to an Agreement of Sublease dated as of the date hereof (the “**Agency Sublease**”), and (iii) the Agency will issue to the Company a certain Letter of Authorization for Sales Tax Exemption, dated as of the date hereof, substantially in the form annexed hereto as Exhibit “A”; and

WHEREAS, in furtherance of such purposes, on [\_\_\_\_\_, 20\_\_], the Agency adopted a resolution (the “**Resolution**”) authorizing the undertaking of the Project and the execution and delivery of this Agreement, the Company Lease, the Agency Sublease, [the PILOT Agreement and PILOT Mortgage], the issuance of the Sales Tax Letter and any and all documents and instruments, and any and all acts and things necessary or proper for carrying out the Project; and

WHEREAS, simultaneously with the execution and delivery of this Project Agreement, the Agency will execute and deliver to the Company the Sales Tax Letter to evidence the granting of the tax exemption for the Exempt Property; and the Agency will file with the New York State Department of Taxation and Finance a Form ST-60 entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” reporting the appointment of the Company as agent of the Agency for purposes of the Project;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND REPRESENTATIONS

**SECTION 1.1: Definitions.** The following terms shall have the following meanings in this Agreement:

**Act** shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 788 of the Laws of 1976 of the State of New York, as amended by Chapter 564 of the laws of 1983 of the State of New York.

**Affiliate of a Person** shall mean a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

**Agency** shall mean the County of Westchester Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

**Agency Sublease** shall have the meaning provided in the recitals of this Agreement.

**Agreement** shall mean this Agreement and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

**Annual Report** shall have the meaning provided in Section 2.18 of this Agreement.

**Authorized Representative** shall mean, (i) in the case of the Agency, the Chairman, Executive Director, Secretary or Assistant Secretary of the Agency, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Company; and (ii) in the case of the Company, a member, manager, the Chief Executive Officer, Chief Financial Officer, the Treasurer, or any other officer or employee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Company has given written notice to the Agency.

**[Town/Village/City]** shall mean the [Town/Village/City] of [\_\_\_\_\_].

**Commencement Date** shall mean the date this Agreement is executed and delivered.

**Company** shall mean [\_\_\_\_\_], and any affiliates in possession of the Project Facility and operating the Project Facility as contemplated hereunder.

**Company Benefits** shall have the meaning provided in Section 3.4 of this Agreement.

**Company Lease** shall have the meaning provided in the recitals of this Agreement.

**Company Property** shall mean any and all machinery and equipment, data processing equipment, furniture, furnishings, trade fixtures and other personal property owned, leased or used by the Company, regardless whether same is located or installed in or at the Project Facility, with respect to which no sales or use tax exemption shall have been received pursuant to the Sales Tax Letter.

**Completion of Project Construction** shall mean the completion of the construction of the Improvements to the Facility Realty as contemplated and described in the fourth recital paragraph of this Agreement and the issuance by the [Town/Village/City] of

[\_\_\_\_\_] Building Department of a temporary Certificate of Occupancy for the Project Facility.

**County** shall mean the County of Westchester, New York.

**Exempt Property** shall mean only tangible personal property conveyed to or acquired by the Company and its sub-agents as agents for the Agency in connection with the Project on or before the date of Completion of the Project, in accordance with Section 2.2 hereof or, if the acquisition was made prior to the Commencement Date, in reliance on the Sales Tax Letter, for incorporation in the Project Facility or for use in connection with the Project Facility. Exempt Property shall include the Project Equipment and the Project Materials (as hereinafter defined)

**Facility Realty** shall have the meaning provided in the recitals of this Agreement.

**Form ST-123** shall mean Form ST-123 “IDA Agent and Project Operator Exempt Purchase Certificate” of the New York State Department of Taxation and Finance.

**Municipalities** shall mean the [Town/Village/City], the County and the School District.

**Permitted Encumbrances** shall mean: as of any particular time:

- (i) any liens or encumbrances created by the Project Documents or any liens or encumbrances created by the Permitted Mortgage;
- (ii) liens for real estate taxes, assessments, levies and other governmental charges;
- (iii) utility, access and other easements and rights-of-way, restrictions and exceptions that will not in any material respect interfere with or impair the use of the Project Facility as contemplated by the parties hereto;
- (iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project Facility and as do not materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency under this Agreement;
- (v) any mechanics', workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof;
- (vi) all title exceptions to which the Project Facility is subject on the date of this Agreement; and

- (vii) the lien of any “Purchase Money Security Interest” (as defined in Section 9-107 of the New York Uniform Commercial Code) in any Exempt Property.

**Permitted Mortgage** shall mean a bona fide mortgage encumbering the Project Facility (or any part thereof) and held by a Permitted Mortgagee, including any amendments thereto.

**Permitted Mortgagee** shall mean a bona fide third party mortgage lender which is not an Affiliate of the Company. \_\_\_\_\_, and its successors and/or assigns, is a Permitted Mortgagee.

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

**PILOT Agreement** shall mean that certain Payment in Lieu of Taxes Agreement, dated as of the date hereof, by and between the Agency and the Company, including any amendments thereto.]

**PILOT Mortgage** shall mean that certain Mortgage, dated as of the date hereof, by and among the Agency, the Company and the [Town/Village/City], for itself and as agent for the County and School District, including any amendments thereto.]

**Project** shall have the meaning provided in the recitals of this Agreement.

**Project Counsel** shall mean Oxman Law Group, PLLC, or such other attorneys that are recognized for their expertise in municipal finance law and are selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

**Project Documents** shall mean this Agreement, the Sales Tax Letter, the Company Lease, the Agency Sublease the PILOT Agreement and the PILOT Mortgage.

**Project Equipment** shall mean so much of the machinery, equipment, furnishings, and other tangible personal property acquired by or on behalf of the Agency pursuant to the Sales Tax Letter for installation or use at the Project Facility as part of the Project as shall not constitute a part of the Facility Realty, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto or therefor. Project Equipment shall not include Project Materials (as hereinafter defined).

**Project Facility** or **Facility** shall mean, collectively, the Facility Realty and the Project Equipment.

**Project Investment** shall mean the sum invested by the Company in the construction, improving, equipping and furnishing of the Project Facility.]

**Project Materials** shall mean so much of the Exempt Property as shall consist of building materials or any other property or services to be used in connection with the construction, renovation or reconstruction of the Project Facility, and which are consumed in such construction, renovation or reconstruction or incorporated into the Project Facility.

**Public Benefits** shall mean the measurable project goals described in the representations, promises, undertakings and expectations of the Company set forth in subsections [(p), (q), (r) and (s)] of Section 1.4 below.

**Rental Units** shall mean, collectively, (i) the Residential Units, and (ii) the retail space or commercial space to be included in the Improvements as divided and leased to retail or commercial tenants.]

**Residential Units** shall have the meaning provided in the recitals of this Agreement.]

**Resolution** shall have the meaning provided in the recitals of this Agreement.

**Sales Tax Letter** shall mean a Letter of Authorization for Sales Tax Exemption or a Preliminary Letter of Authorization for Sales Tax Exemption made available to the Company (or to a sub-agent of the Company) by the Agency pursuant to Article II of this Agreement.

**Sales Taxes** shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

**School District** shall mean the [\_\_\_\_\_] School District.

**State** shall mean the State of New York.

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

**Unavoidable Delay** shall mean any delay, obstruction, or interference resulting from any act or event which has a material adverse effect on a party's ability to perform its obligations under this Agreement, provided that such act or event is beyond the reasonable control of such party and was not separately, concurrently or partially caused by any negligent or willful act or omission of such party, and provided that such act or event could not have been prevented by reasonable action on such party's part and such party asserting such act or event has used reasonable good faith efforts to remedy the delaying condition in an expedient and efficient manner, including, without limitation, acts of force majeure; provided, however, that Unavoidable Delay shall not include a delay resulting from financial inability of the Company. During the period of such Unavoidable Delay, those obligations which are herein specifically stated to be subject to Unavoidable Delay shall be suspended as long as such conditions exist.

**SECTION 1.2: Representations, Warranties and Covenants by Agency.** The Agency represents and warrants that the Agency (i) is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State, (ii) is authorized and empowered to enter into the transactions contemplated by this Agreement and the other Project Documents and to carry out its obligations hereunder and thereunder, and (iii) by proper action of its members, has duly authorized the execution and delivery of this Agreement. Except as may otherwise be expressly agreed to in writing by the Company, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security any of the Project Facility or Exempt Property, or any part thereof, and shall not take any action or execute any document which shall create a lien or encumbrance on the Project Facility or Exempt Property.

**SECTION 1.3: Findings by Agency.** The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the Application and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby affirms its findings and determinations set forth in the Resolution.

**SECTION 1.4: Representations, Warranties and Covenants by the Company.** The Company makes the following representations and warranties:

(a) The Company is a [\_\_\_\_\_] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_], authorized to do business in the State of New York, is not in violation of any provision of its [articles of organization or operating agreement] [OR] [certificate of incorporation or by-laws], has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by all requisite action on the part of the Company and, to the Company's knowledge will not violate any provision of law, any order of any court or agency of government, or the articles of organization or operating agreement of the Company, or any material indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than is permitted under this Agreement.

(c) To the Company's knowledge, there is no action or proceeding pending or threatened by or against the Company by or before any court or administrative agency that would materially adversely affect the ability of the Company to perform its obligations under this Agreement, and all authorizations, consents and approvals of governmental bodies or agencies, if any, required to be obtained by the Company as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Company hereunder have been obtained.

(d) The Company intends to develop and/or operate the Project Facility, or cause the Project Facility to be developed and/or operated, as a qualified “project” in accordance with and as defined under the Act.

(e) The Financial Assistance provided by the Agency to the Company through the straight-lease transaction (within the meaning of the Act) as hereinabove described is reasonably necessary in order for the Project to be economically viable and to induce the Company to proceed with the Project.

(f) No Person other than the Company and its Affiliates and their respective agents are presently in use, occupancy or possession of any portion of the Project Facility.

(g) The Project is reasonably necessary to induce the Company to undertake the economic activities contemplated hereunder within the County and the State.

(h) The transactions contemplated by this Agreement shall not provide financial assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs, and undertaking the Project will serve the public purposes of the Act by helping to preserve permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

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

(j) This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforcement of this Agreement may be limited by any (i) applicable bankruptcy, insolvency, moratorium, reorganization or other laws relating to fraudulent conveyance or affecting the enforcement of rights of creditors of the Company generally and (ii) equitable principles of general applicability.

(k) The Company is the Owner of the Facility Realty.

(l) The Company will use all reasonable efforts to ensure that the Project Facility will be designed and operated in material compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to safety and environmental quality.

(m) The Project Equipment will be installed or located entirely within the Facility Realty and will not be permanently removed from the Facility Realty during the term of this Agreement, except as otherwise expressly permitted hereunder.

(n) The Application, submitted to the Agency requesting financial assistance, and (ii) the Environmental Assessment Form and supplemental material submitted to the Agency are true, correct and complete in all material respects.

(o) The Project will cause no “adverse environmental impacts” as such phrase is interpreted under the New York State Environmental Quality Review Act.

[(p) The Company reasonably expects that Project Investment shall be not less than \$[\_\_\_\_\_] prior to the completion of Project Construction.]

[(q) The Company will employ, or cause to be employed, in the construction and equipping of the Project, Local Workers to the extent set forth in Section 2.14 below.]

[(r) For a period of not less than [fifteen (15)] years from Completion of Project Construction, the Company will maintain not fewer than [\_\_\_\_\_] (\_\_) residential rental units in the Project Facility as “affordable” in accordance with Section 2.17 below].

[(s) The Company reasonably expects that by December 31, 20[\_\_\_], following the Completion of Project Construction and continuing for a period of ten (10) years thereafter, the number of occupied full-time equivalent employment positions at the Project Facility shall be not fewer than [\_\_\_\_\_] (\_\_)], including employees of the Company or its affiliates [and any retail or commercial tenants or subtenants].]

**SECTION 1.5: Project Purpose.** The purpose of the Agency’s provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of County of Westchester, and specifically to induce and encourage the Company to provide the Public Benefits.

## **ARTICLE II**

### **THE PROJECT**

#### **SECTION 2.1: Appointment of Company as Agent.**

(a) The Agency hereby appoints the Company, together with its sub-agents, as agent of the Agency to undertake the Project, in accordance with the terms of the Project Documents, including, without limitation, (i) acquiring the Land, [renovating] [reconstructing] [constructing] the Improvements and designing, acquiring, constructing and installing the Project Materials and the Project Equipment in the Facility Realty (collectively, the “**Project Construction**”), (ii) making, executing, acknowledging and delivering any contracts, orders,

receipts, writings and instructions with any other Persons (subject in each case to Section 2.2 hereof), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project, (iii) paying all fees, costs and expenses incurred in connection with the foregoing from funds made available therefor by the Company in accordance with or as contemplated by this Agreement, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection therewith (all of the foregoing, collectively, the “**Project Activities**”).

(b) The Company is hereby authorized to complete, execute and deliver, to each vendor or lessor of Exempt Property and/or services entitled to exemption from Sales Tax hereunder, a Form ST-123 in respect of such purchase or lease, as prescribed by the Tax Department.

(c) Title to (or a leasehold or licensee's interest in, as appropriate) all Exempt Property shall vest in the Agency immediately upon (i) the execution by the Company as Agent for the Agency pursuant to the Sales Tax Letter of a contract, lease, bill, invoice or purchase order therefor, (ii) payment therefor, or (iii) delivery thereof, whichever shall be so provided in the related contract, lease, bill, invoice or purchase order. The Company shall cause each item of Exempt Property to be made subject to the Agency Sublease, free and clear of all liens, security interests and encumbrances other than Permitted Encumbrances. The Company shall take all action reasonably necessary to protect the title, leasehold, or licensee interest of the Agency in the Project Facility against the claims of any third parties.

(d) The Company unconditionally represents, warrants, covenants and agrees that to its knowledge, it has obtained or caused to be obtained all necessary approvals, if any, from any and all governmental agencies requisite to the Project Activities, all of which has been done in material compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Project Facility and this Agreement.

(e) The Company hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement (i) the Project Facility will be 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 Project Facility not to be 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 Project Facility or the Project not be to a “project” within the meaning of the Act. The Company shall not occupy, use or operate the Project Facility, or allow the Project 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 Project 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.

- (f) (i) The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project Materials or the Project Equipment, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project Materials or the Project Equipment, or to furnish any utilities or services for the Project Materials or the Project Equipment and the Company hereby assumes full responsibility therefor.
- (ii) The Company, either directly, or through the fee owner of the Facility Realty, shall have the right to make such alterations, replacements or additions to the Project Facility or any part thereof from time to time as it in its sole discretion may determine to be desirable, provided that (A) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, and (B) such additions or alterations are promptly and fully paid for in accordance with the terms of the applicable contract(s) therefor, and in order that the Project Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances.
- (iii) Notwithstanding anything to the contrary contained herein, in any instance where the Company determines that any item of Project Materials or Project Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Project Materials or Project Equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility. At 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 Project Materials or Project Equipment free from the lien of this Agreement. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the lien this Agreement any item of Project Materials or Project Equipment removed pursuant to this Section 2.1(f)(iii).

**SECTION 2.2: Limitation on Sales Tax Exemption.**

(a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project Activities shall be limited to purchases of Exempt Property effected by the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project Activities. The Company acknowledges and represents that it is familiar with the laws of the State of New York as applicable to Sales Taxes and the Sales Tax

Letter, and it understands that a failure to comply with such applicable law (or with the terms and conditions of the Sales Tax Letter or this Agreement) may result in the loss by the Company of the exemption from Sales Taxes and other benefits hereunder.

(b) The Company covenants and agrees that after the date hereof and during the term of this Agreement it shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Company for Exempt Property as agent for the Agency in connection with the Project Activities:

“This contract is being entered into by [\_\_\_\_\_]  
[if Sub-Agent is being appointed, list Sub-Agent] (the “Company”),  
in its capacity [if Sub-Agent is being appointed, provide “as Sub-  
Agent of [\_\_\_\_\_]”] as agent for and on behalf of the  
County of Westchester Industrial Development Agency (the  
“Agency”) in connection with a certain project of the Agency (the  
“Project”), consisting of the construction, improvement, furnishing,  
fixturing and equipping of the Company’s premises located in the  
[Town/Village/City] of [\_\_\_\_\_], County of  
Westchester, State of New York, such premises known as  
[\_\_\_\_\_], New York, and acquisition and  
installation of certain materials, machinery, equipment, trade  
fixtures, furniture, furnishings and other tangible personal property  
at such facility. The materials, machinery, equipment, trade  
fixtures, furniture, furnishings and other tangible personal property  
to be used for the Project which is the subject of this [contract,  
agreement, invoice, bill or purchase order] shall be exempt from the  
sales and use tax levied by the State of New York, the County of  
Westchester, and the [Town/Village/City] of  
[\_\_\_\_\_], if any, if effected in accordance with the  
terms and conditions set forth in the attached Letter of Authorization  
for Sales Tax Exemption of the Agency, and the Company hereby  
represents that this [contract, agreement, invoice, bill or purchase  
order] is in compliance with the terms of the Letter of Authorization  
for Sales Tax Exemption. The liability of the Agency hereunder is  
limited as set forth in the Letter of Authorization for Sales Tax  
Exemption. By execution or acceptance of this [contract,  
agreement, invoice, bill or purchase order], the vendor, contractor  
or supplier hereby acknowledges the terms and conditions set forth  
in this paragraph.”

If the Company shall fail to include, incorporate by reference or otherwise cause any new contract, agreement, invoice, bill or purchase order entered into after the date hereof to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Company shall not claim any sales or use tax benefits or exemptions with respect to any

such contract, invoice, bill or purchase order and the Company shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of twelve percent (12%) per annum, from the date of such taking.

(c) (i) Concurrently with the execution and delivery of this Agreement, the Agency shall make available to the Company the Sales Tax Letter. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder.

(ii) The Sales Tax Letter shall be dated the date hereof and shall be effective for a term expiring upon the next succeeding March 15, renewable for successive twelve (12) month periods as hereinafter set forth; provided, however, that the term and all renewal terms shall expire on the earliest of (A) the termination of this Agreement, (B) the date upon which the Sales Tax Benefits Limit (as defined in Section 2.2(d) below) is met and/or exceeded, (C) Completion of Project Construction, (D) the third (3<sup>rd</sup>) anniversary of the date of this Agreement (except that if the Completion of Project Construction shall have failed to occur before the third (3<sup>rd</sup>) anniversary of this Agreement due to Unavoidable Delay, then such expiration date shall be extended by the lesser of the number of days during which such Unavoidable Delay is continuing or twelve (12) months, or (E) the termination of the Sales Tax Letter pursuant to Section 3.2(a) hereof. Project Construction shall conclusively be deemed completed ninety (90) days after the issuance of a temporary certificate of occupancy for the Project Facility, renovated and reconstructed as contemplated in this Agreement. Subject to the limitations contained in clauses “(A)” through “(E)” of this Section 2.2(c)(ii), the Company shall be entitled to a twelve month renewal or replacement Sales Tax Letter on or before March 15 of each year during the term hereof, provided that (x) the Company shall have submitted to the Agency a form ST-340 and an Annual Report for the preceding year, and (y) and no Event of Default as defined in Section 3.1 hereof shall have occurred and be continuing beyond the expiration of any period to cure; provided, however, that such renewal or replacement Sales Tax Letter shall extend only to purchases or leases of Project Materials or Project Equipment for installation and use in such portion or portions of the Project Facility as to which Project Construction shall not have been completed prior to the date of such renewal or replacement.

(iii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to the Company that the Company shall be in default beyond any applicable grace period under this Agreement until the Company shall pay any amounts due, and/or perform all of its obligations, with respect to any such default.

(iv) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter:

(A) shall only be utilized for materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property which shall be purchased, completed or installed for incorporation into or use (i) at the Facility Realty, and (ii) solely by or on behalf of the Company and its agents or Affiliates, and not with any intention to sell, transfer or otherwise dispose of any such items to a Person as shall not constitute the Company or an agent or Affiliate of the Company;

(B) shall be available only for (i) the purchase of materials and fixtures to be installed in the Facility Realty (or if adjacent to the Facility Realty, then solely for the benefit of the Company and its subsidiaries, affiliates, and related companies at the Facility Realty), and (ii) the purchase or leasing of machinery, equipment, furniture, furnishings and other items of tangible and intangible personal property (including computer hardware and software, but excluding ordinary office supplies such as pencils, paper clips and paper); provided, however, that: (1) any such property shall have a useful life of not less than one year and shall be capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure; (2) any such property shall be solely for the use of the Company, its subsidiaries, affiliates, and related companies at the Facility Realty and for no other entity and at no other location; (3) in the case of rental arrangements, such arrangements either provide for a purchase option on the part of the Company or constitute a capital lease; and (4) any maintenance contracts shall only be with respect to property having a useful life of one year or more, the replacement of parts (other than parts that contain materials or substances that are consumed in the operation of such property where such parts must be replaced whenever the substance is consumed) or the making of repairs but shall not include maintenance of the type as shall constitute janitorial services;

(C) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.2 (c)(iii) hereof; provided, however, that in the event the Company shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver; and

(D) shall not be available subsequent to the termination of this Agreement.

(v) In the event that the Company shall knowingly utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.2(c)(iv) hereof, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to 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 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.

(vi) Upon request by the Agency of, and reasonable notice to the Company and subject to the Company's confidentiality requirements, the Company shall make available at reasonable times to the Agency all such books and records of the Company and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency, as shall be necessary to indicate in reasonable detail those costs for which the Company shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(vii) The Company shall not knowingly permit any materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Company to utilize the Sales Tax Letter for any purpose other than for the Project Activities.

(d) In no event shall the total Sales Tax Benefits to the Company hereunder exceed the sum of \$[ ] (the "**Sales Tax Benefits Limit**"), unless and until: (i) the Company shall have demonstrated to the satisfaction of the Agency that an increase in the Sales Tax Benefits Limit is necessary to exempt from Sales Taxes additional costs of the Project as described in the Application and contemplated by the Resolution, not resulting from a material change in the nature or scope of the Project, and (ii) the Agency shall have duly authorized such additional Sales Tax Benefits by further resolution. The Company shall pay to the Agency, as Excess Benefits Rent under the Agency Sublease, additional rent in the amount of five percent (5%) of all such Excess Benefits, payable on March 31 of the year immediately following the year in which such Excess Benefits are received by the Company. Unless an increase in the Sales Tax Benefits Limit shall be authorized as set forth above, the Company shall pay to the Agency, as a return of Benefits conferred by the Agency, the amount of all Sales Tax Benefits received by the Company in excess of the Sales Tax Benefits Limit

(e) The Company shall observe and comply with the terms and conditions of the Sales Tax Letter.

(f) The Sales Tax Letter shall not be delivered by the Agency unless the Company shall have completed and submitted to the Agency Form ST-60 in the form provided by the Tax Department. In addition, the Company shall not permit any sub-contractor or sub-agent to avail itself of the Sales Tax Letter until the Company shall have submitted to the Agency a completed Form ST-60 in respect to such sub-contractor or sub-agent. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project Activities (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Project Materials and Project Equipment in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Company by the Agency which is in the Company's possession or in the possession

of any agent of the Company. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project Activities is or shall be exempt from sales taxes or use taxes under the laws of the State.

(g) The Company represents that it is familiar with Part 542 of Subchapter A of Chapter IV of Title 20 of the Codes, Rules and Regulations of the State of New York (“NYCRR”), as same may be amended from time to time; and the Company will keep and maintain such records as are required to be kept pursuant to §542.1(b) thereof (20 NYCRR §542.1(b)), or as may be required in order to comply with the reporting and/or disclosure requirements of said Part 542.

(h) The Company shall file annually with the Tax Department, on Form ST-340 (or any replacement or successor form) and in a manner and consistent with such regulations as are or may be prescribed by the Tax Department, a statement of the value of all sales and use tax exemptions claimed by the Company or agents of the Company in connection with the Project during the preceding year as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Tax Department, and shall state in such transmittal whether and to what extent the sales and use tax exemptions claimed during such year have resulted in any liability of the Company for the payment of “Excess Benefits Rent” pursuant to Section 4(b) of the Agency Sublease.

### **SECTION 2.3 Taxes, Assessments and Charges.**

(a) Acknowledgment of Parties:

The Parties acknowledge that under the Agency Sublease, the Company will be responsible for paying all real estate taxes for the Facility Realty. The following shall apply if those real estate taxes are reduced as a result of the Agency's interest in the Facility Realty and/or the Project (any such reduction, an “**Agency Tax Exemption**”). It is the intent of this Agreement that the Company shall at all times be obligated to pay either real estate taxes on the Facility Realty, or payments in lieu of taxes (“**PILOT**”) hereunder, and that the foregoing obligations shall be mutually exclusive and not duplicative of each other.

(b) Payments Prior to PILOT Commencement Date.

The PILOT Commencement Date shall be the first taxable status date upon which an Agency Tax Exemption takes effect. From the date of this Agreement until the PILOT Commencement Date, the Company shall pay all real estate taxes with respect to the Facility Realty at such times and in such amounts as shall be assessed by the applicable Municipality.

(c) Agency's Representations and Covenants.

[The parties acknowledge that the Company has negotiated with the [Town/Village/City] a reduction in real estate taxes to be effected by a PILOT Agreement, and the

Agency shall take such reasonable action as may be necessary to give effect to such PILOT Agreement. The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty, and the Agency will not file a Tax Department Form RP-412-a Application for Real Property Tax Exemption under Section 412-a of the Real Property Tax Law unless and until the Company has executed and delivered a PILOT Agreement acceptable to the [Town/Village/City]. In the event that the parties enter into a PILOT Agreement as described above, the terms of this Agreement and of the Company Lease and the Agency Sublease shall be extended, as necessary, to coincide with the term of the PILOT Agreement.]

[OR]

[The parties acknowledge that Agency has not authorized an exemption from real estate taxes for the Facility Realty and does not intend to file a Tax Department Form RP-412-a Application for Real Property Tax Exemption for same under Section 412-a of the Real Property Tax Law. However, in the event that the Company shall negotiate with the [Town/Village/City] a reduction in real estate taxes to be effected by a PILOT Agreement, the Agency shall take such reasonable action as may be necessary to give effect to such PILOT Agreement. The Agency makes no representation as to the availability of an exemption from real estate taxes for the Facility Realty, and the Agency will not file an application for exemption under Section 412-a of the Real Property Tax Law unless and until the Company has executed and delivered a PILOT Agreement acceptable to the [Town/Village/City]. In the event that the parties enter into a PILOT Agreement as described above, the terms of this Agreement and of the Company Lease and the Agency Sublease shall be extended, as necessary, to coincide with the term of the PILOT Agreement.]

(d) The Company's Acknowledgments and Release:

The Company acknowledges that the Agency has not represented the availability of any real estate tax exemption for the Facility Realty. The Company hereby releases the Agency from any claim arising from any loss of the benefits that could otherwise arise from a representation by the Agency of the availability of such an exemption.

(e) Payments in Lieu of Real Estate Taxes:

If the Facility Realty becomes subject to an Agency Tax Exemption, the Company understands and agrees that, except as otherwise agreed in the PILOT Agreement, the Company shall pay or cause to be paid, as PILOT payments, the amount of taxes that the Company would have been required to pay if the Facility Realty were not subject to the Agency Tax Exemption. Such payments will be made directly to the appropriate affected tax jurisdiction (as that term is defined in the General Municipal Law) to whom real estate taxes would ordinarily be paid, no later than the due date of such taxes; and the Company shall furnish proof of such payments to the Agency. Except as otherwise expressly agreed by the Municipalities, the portion of PILOT Payments allocable to each of the County, the [Town/Village/City] and the School District shall be the same as the portions allocable to each Municipality of Real Estate Taxes that would be taxed against the Facility Realty if it were not subject to the Agency Tax Exemption.

(f) Apportionment of Payments After Transfer.

In the event that the Facility Realty, or any portion thereof, is exempt from real estate taxes, as a result of the Project, and the Facility Realty is subsequently released from the Agency's jurisdiction or control, the Company shall cause the appropriate taxing jurisdiction(s) to return the Facility Realty to the tax rolls.

(g) Review of Assessments.

As long as this Agreement is in effect, the Agency and the Company agree that (i) the Agency shall be deemed to be the owner of the Facility Realty subject to the Project Documents; (ii) the Agency hereby irrevocably appoints the Company as its agent and attorney-in-fact for the purpose of instituting judicial review of any assessment of the Facility Realty, pursuant to the provisions of Article 7 of the RPTL or any other applicable law as the same may be amended from time to time during the term of this Agreement, such appointment being coupled with an interest; and (iii) the Company shall have sole authority and power to file grievances and protests, protesting any assessment of any grievances and protests. In order to undertake the foregoing, the Agency shall provide any written authorization and/or execute any documents required by statute or the applicable taxing authority or reasonably requested by the Company, so long as not prohibited by applicable law.

**Section 2.4: Indemnity.** (a) The Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "**Indemnified Parties**") and each an "**Indemnified Party**") harmless of, from and against any and all third party claims (whether in tort, contract or otherwise) and demands, and resulting expenses (including reasonable attorney's fees and expenses), and liabilities for losses, damage, injury and liability of every kind and nature and however caused, including claims for taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party, arising upon or about the Project Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Project Facility, (iii) any defects (whether latent or patent) in the Project Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party or the Company of, or performance by the Indemnified Party or the Company, as the case may be, of, any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Company or its respective directors, officers, partners, employees agents or servants or persons under the control or supervision of the Company or any other Person who may be about the Project Facility, due to any act or negligence of any Person other

than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) The Company releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any third party lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters referenced above other than, with respect to each Indemnified Party, legal actions arising from the gross negligence or willful misconduct of such Indemnified Party. Each Indemnified Party, as the case may be, shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 2.4; such notice shall be given as promptly as possible in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 2.4, provided that the Company shall have been made a co-defendant in the subject action or proceeding against the Indemnified Party or shall have otherwise been made aware of the assertion of such claim or action against the Indemnified Party. Notwithstanding anything to the contrary contained herein or in any Project Document to the contrary, any Indemnified Party seeking indemnification hereunder or under any of the other Project Documents shall cooperate fully with the other party (the "Indemnifying Party") and authorizes the Indemnifying Party to conduct and control the management of defense of the applicable third party claim, including selection of counsel reasonably acceptable to the Indemnified Party. So long as the Indemnifying Party shall have retained such counsel and shall be diligently defending the Indemnified Party, the Indemnified Party shall not compromise or settle any such third party claim or take any action without the prior written approval of the Indemnifying Party, which approval shall not be unreasonably withheld by the Indemnifying Party.

(c) The indemnifications and protections set forth in this Section 2.4 shall be extended to the Agency and its members, directors, officers, employees, agents and servants and persons under the Agency's control or supervision.

(d) For the purposes of this Section, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(e) To effectuate the purposes of this Section, the Company will provide for and insure, in the public liability policies required in this Agreement, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section by naming the Agency as an additional insured under such policies. Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 2.4 shall survive and remain in full force and effect after the termination of this Agreement.

**SECTION 2.5: Compensation and Expenses of the Agency.** The Company shall pay the reasonable fees, costs and expenses of the Agency, including any reasonable fees and disbursements incurred by the Agency's Project Counsel and/or the Agency's general counsel in performing services for the Agency, in connection with this Agreement and/or the negotiation or preparation of any other Project Document. The Company shall pay to the Agency all "Base

Rent”, “Annual Administrative Rent”, “Excess Benefits Rent” and “Additional Rent” payable under Section 4 of the Agency Sublease, as said terms are defined therein.

**SECTION 2.6: Retention of Title to Project Equipment and Facility.** The Agency shall not sell, assign, encumber, lease, convey or otherwise dispose of its interest in the Project Equipment or Project Facility or any part thereof, without the prior written consent of the Company, and any purported disposition or encumbrance without such consent shall be void; provided, however, that the foregoing shall not prohibit the conveyance of the Project Equipment and leasehold interest in the Facility Realty by the Agency to the Company upon the termination of this Agreement pursuant to Section 3.2(a) hereof or otherwise.

**SECTION 2.7: Further Assurances.** The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Agency reasonably deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

**SECTION 2.8: Insurance.**

(a) At all times throughout the term of this Agreement, the Company shall maintain or cause to be maintained insurance, with insurance companies licensed to do business in the State of New York, insurance against such liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like of like size and type as that of the Company, including, without limitation:

- (i) Comprehensive General Liability coverage written on an occurrence basis with a combined single limit of not less than \$5,000,000;
- (ii) Auto Liability Insurance including coverage for owned, hired, and non-owned vehicles in an amount not less than \$1,000,000; and
- (iii) Worker’s Compensation and Employer’s Liability Insurance providing statutory benefits and Employer’s Liability insurance in an amount not less than \$500,000.

The limits required above may be attained through the combination of primary Comprehensive General Liability and Umbrella Liability policies.

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

- (i) designate the Agency as additional insured as its interests may appear, except in the case of Worker’s Compensation and Employer’s Liability Insurance;

- (ii) 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;
- (iii) 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 Project Facility;
- (iv) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, 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 any Person insured under such policy, all to the extent obtainable from such insurance carrier; and
- (v) contain such other terms and provisions as any owner or operator of facilities similar to the Project 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 Project Facility owned or operated by it.

(c) The Company shall provide to the Agency a certificate or certificates evidencing the coverages required herein, and a replacement certificate or certificates annually upon renewal. The Company shall give prompt notice to the Agency of any cancellation or threatened cancellation of such insurance for any reason whatsoever, including the Company's failure to pay any accrued premium, or lapse or expiration of coverage, or any reduction in amount, or any material change in the coverage, in no event later than ten (10) days after receipt of notice or communication from any insurer advising of same.

(d) The Company, at its own cost and expense, shall make all proofs of loss and take all other steps necessary or reasonable requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section, and shall cause any contractor or other insuring party under this Section to take similar action with respect to such party's insurance required hereunder.

(e) In addition to the other requirements of this Section, the Company shall cause the Agency to be added as an additional insured to any policy insuring the Company against any risks, loss or damage to the Project Facility, except in the case of Worker's Compensation and Employer's Liability Insurance.

(f) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OF COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE PROJECT FACILITY OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE COMPANY.

(g) Nothing contained in this Agreement shall be deemed to modify the obligations of the Company pursuant to any Permitted Mortgage with respect to insurance or the application of the proceeds thereof. The Agency expressly acknowledges that the mortgagee under a Permitted Mortgage shall control the collection, use and application of the proceeds of the property insurance. The obligations of the Company hereunder shall be independent of any such other obligations relating to insurance.

**SECTION 2.9: Company Property.**

The Company shall have the right to install, remove, repair, replace or finance or permit to be installed, removed, repaired, replaced or financed at the Project Facility any Company Property, without conveying title thereto, or a license or leasehold interest therein, to the Agency nor subjecting such property to this Project Agreement. The Agency shall not be responsible for any loss of or damage to Company Property. The Company shall also have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Company Property.

**SECTION 2.10: Omitted.**

**SECTION 2.11: Assignment and Subletting.**

(a) It is the purpose and intent of the Agency in entering into this Agreement that the Company Benefits (as defined in Section 3.4 below) accrue to the Company, as an inducement to the Company to enter into the Project and to promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the County of Westchester and the State of New York and improve their standard of living, and that the Project is authorized by the Act and will be in furtherance of the policy of the State of New York as set forth therein. Therefore, it is a condition of the receipt and retention of such Company Benefits that the Company remain in occupancy of the Facility under lease or sublease or fee ownership; and no part of the Facility shall be sublet or assigned for occupancy by any other entity so long as it remains a part of the Facility, without the express written consent of the Agency. Notwithstanding the foregoing, [(i) the consent of the Agency shall not be required for any lease or sublease of the Rental Units, or any assignment of same, and (ii)] the Agency shall not unreasonably withhold or delay its consent to [a] [any other] subletting or assignment requested by the Company if the fulfillment of the foregoing purpose and intent of the Agency would not be materially and adversely affected by such proposed subletting or assignment.

(b) In addition to the restrictions set forth in subsection “(a)” above, the Company may not assign its interest in this Agreement or sublease the Facility unless:

(i) any assignee or sublessee in whole shall have assumed all of the obligations of the Company arising or accruing under this Agreement from and after the date of such assignment or sublease, including the obligation to utilize the Facility as a qualified “project” within the meaning of the Act; and

(ii) the sublease or assignment shall not cause the Facility to cease being a “project” under the Act; and

(iii) the use or occupation of the Facility by the assignee or sublessee shall not cause the Project or the Agency to be in violation of any of the prohibitions contained in §862 of the General Municipal Law; and the Subtenant and each assignee or sublessee shall certify to the Agency such facts as the Agency may reasonably request in order to establish compliance with such section and all other relevant provisions of the Act; and

(iv) the Company shall provide to the Agency a copy of the proposed contract of sale, sublease or assignment in substantially final form no later than 20 days before the proposed transfer or commencement date; and

(v) the Company has received prior written consent from the Agency.

(c) The Company shall provide to the Agency a copy of the sublease or assignment and assumption no later than 10 days before the proposed commencement date.

(d) Notwithstanding the other terms of this Section, the Agency agrees that the Company may, without the consent of the Agency but upon written notice to the Agency: (i) mortgage or assign its interest in the Project Facility, the Company Lease and/or the Agency Sublease to a Permitted Mortgagee as security for a loan or other obligation; or (ii) sublease, convey or assign all or part of its interest in the Project Facility, the Company Lease and/or the Agency Sublease to an Affiliate of the Company; or (iii) assign its interest in this Agreement and other Project Documents to any third party who acquires all or substantially all of the business of the Company by merger, sale of assets, foreclosure, deed in lieu of foreclosure, or otherwise, so long as such Affiliate or third party (as the case may be) agrees in writing to be bound by the terms of this Agreement and the other Project Documents; and provided in each case that the sublease or assignment shall not cause the Project Facility to cease being a “project” under the Act.

(e) No sublease or assignment shall relieve the Company from any of its obligations hereunder and under the other Project Documents absent the express written agreement of the Agency.

#### **SECTION 2.12: Agency to Join in Mortgage; Subordination.**

(a) At the request of the Company, subject to the following terms and conditions, and at the Company's sole cost and expense (including, without limitation, the payment of the reasonable fees and expenses of the Agency's counsel in connection therewith), the Agency shall, by written instrument in form and substance reasonably acceptable to the Agency (i) join as Mortgagor in any mortgage (an “**Agency Mortgage**”) of the Facility held by a Permitted Mortgagee so as to encumber its leasehold interest therein, or (ii) subordinate its interest in the Facility to the lien of any mortgage thereon held by a Permitted Mortgagee; provided, however, that such subordination (A) shall create no obligation or liability of the

Agency beyond its interest in the Facility, (B) shall not otherwise restrict the right of the Agency to enforce the obligations of the Company under the Sublease Agreement and this Agreement, and (C) shall not extend to the obligations of the Company under Sections 2.3 and 2.4(b) of this Agreement.

(b) Every Agency Mortgage shall provide, in substance, as follows, in substantially the following form:

**“Liability of the Agency Limited.** With respect to the Agency, all covenants, stipulations, promises, agreements and obligations contained in this Mortgage made by the Agency shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Mortgage or otherwise based on or in respect of this Mortgage, or for any claim based thereon or otherwise in respect of this Mortgage, shall be had against any past, present or future member, officer, agent (other than the Borrower), servant or employee, as such, of the Agency, or any person executing this Mortgage on behalf of the Agency, either directly or indirectly. It is expressly understood that this Mortgage, with respect to the Agency, is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Borrower), servant or employee of the Agency under or by reason of the obligations covenants or agreements contained in this Mortgage or implied therefrom. Any and all such personal liability of, and any and all rights and claims against, every director, officer, agent (other than the Borrower), servant or employee of the Agency under or by reason of the obligations, covenants or agreements contained in this Mortgage or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Mortgage. The obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligation of the State of New York or the County of Westchester, New York, and neither the State of New York nor the County of Westchester, New York shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from this Mortgage, the Company Lease, the Sublease, the Property and the Improvements generally, and/or the sale or other disposition of the Property and the Improvements.”

**“Remedies Against the Agency Limited.** With respect to the Agency, it is expressly understood and agreed that, absent criminal behavior, the sole remedies of Mortgagee (and any successor, assign or receiver thereof) against the Agency in connection with this Mortgage and/or the [mortgaged property], including, without limitation, the breach of any representation and warranty made by the Agency in this Mortgage, shall be (i) an action or actions to foreclose this Mortgage as set forth herein (under applicable real property law), (ii) to exercise

its rights under the [Assignment of Leases], (iii) to bring an action to have a receiver for the [mortgaged property] appointed in accordance with the terms hereof, and (iv) to bring an action or actions (A) for specific performance by the Agency of its obligations, and/or (B) to enjoin the Agency from taking any action which would violate its obligations, in each case, under this Mortgage, the [Assignment of Leases], and/or the [Sublease Agreement] (to the extent that Lender is a third party beneficiary of certain rights and benefits under the [Sublease Agreement]), it being expressly agreed that Lender (and any successor, assign or receiver thereof) shall have no right to bring any other action whatsoever against the Agency.”

(c) In respect of an Agency Mortgage which is made in connection with the Initial Acquisition and Construction of the Facility (as hereinafter defined), including a permanent mortgage made upon the completion of construction in order to refinance a construction mortgage, the Agency will agree, in order to obtain the benefit of §874 of the Act in respect of the tax otherwise payable under Article 11 of the Tax Law (the “**Mortgage Recording Tax**”), to cause such Agency Mortgage to be recorded, and to include in such Agency Mortgage the following provision:

**“Agency to Record Mortgage.** The Agency, promptly upon the execution and delivery of this Mortgage and thereafter from time to time, will file, register or record or cause this Mortgage, the [Assignment of Leases] and any other Loan Document creating a lien on and/or a security interest in the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to protect the lien of, security interest created by and absolute assignment of rents contained in this Mortgage on the Mortgaged Property.”

provided that the Company and the mortgagee shall execute and deliver to the Agency an agreement substantially in the form annexed hereto as Exhibit “D”. For the purposes of this Agreement, “**Initial Acquisition and Construction**” shall mean and include the acquisition, construction, improvement, furnishing and equipping of the Project Facility as described in this Agreement and intended to be performed prior to the Completion of Project Construction.

(d) Notwithstanding anything to the contrary set forth above, the Company shall not be entitled by reason of the Project or the Agency’s interest therein to any exemption from Mortgage Recording Tax to the extent that the principal amount secured by an Agency Mortgage exceeds the cost (including both “hard” and “soft” costs) of the Initial Acquisition and Construction of the Project Facility (“**Project Construction Cost**”); but the Agency, at the Company's sole cost and expense (including, without limitation, the payment of the reasonable fees and expenses of the Agency's counsel in connection therewith), will execute and deliver such instruments and affidavits as the Company may reasonably require in order to extend such exemption to a refinancing of an “Agency Mortgage” to the extent of the remaining outstanding balance of the Project Construction Cost.

(e) For purposes of this Section 2.12 and this Agreement, the term “**Permitted Mortgagee**” shall mean a bona fide third party mortgage lender which is not an Affiliate of the Company.

**[SECTION 2.13: Project Investment.**

The Company will invest approximately \$[\_\_\_\_\_] in the construction, improving, equipping and furnishing of the Project Facility prior to the Completion of Project Construction, but not later than [\_\_\_\_\_, 20\_\_], subject to Unavoidable Delay. ]

**[SECTION 2.14: Local Labor.**

The Company acknowledges that a principal purpose of the Agency in participating in this Project is to encourage the hiring of residents of the State and, particularly, Westchester County and other nearby counties in the State. The Company agrees that labor and material contracts in connection with Project Construction will be awarded to qualified contractors, and that the Company will—to the extent practicable—give due consideration to local, minority and women owned contractors or suppliers, and to the use of Local Workers (the “**Local Labor Requirements**”). For the purpose of this Section 2.14, “Local Workers” shall mean workers who are residents of the Counties of Westchester, [Orange, Ulster, Sullivan, Dutchess, Putnam, Rockland and Bronx], State of New York. The Company shall keep, or shall cause to be kept, by all contractors engaged in Project Construction, a log book or similar record of all workers engaged in Project Construction, including hours worked and counties and states in which they reside. The Project will be subject to compliance monitoring and review in accordance with the Agency’s Local Labor Policy.]

**[SECTION 2.15: Green Building Technology.**

The Company shall use good faith efforts to utilize “Green Building” strategies, materials and technologies where practicable in the construction of the Project Facility, substantially as set forth in the Exhibit “C” annexed hereto. ]

**[SECTION 2.16: Residential Rental Project.**

The Company agrees that, commencing on the date of first residential occupancy of the Project Facility following the construction and/or renovation contemplated by this Agreement, and continuing for the term of this Agreement, the Company Lease or the PILOT Agreement, whichever shall be longer, the residential apartment units contained in the Project Facility shall be maintained as rental units and shall not be converted to condominium or cooperative apartment ownership (the “**Residential Rental Project Requirement**”). ]

**[SECTION 2.17: Affordable Housing.**

The Company further agrees that, for a period of [fifteen years] from the date of first residential occupancy of the Project Facility following the construction and/or renovation

contemplated by this Agreement, [\_\_\_\_\_ (\_\_\_)] of the residential apartment units in the Project Facility shall be maintained as “affordable” in accordance with [the White Plains Affordable Rental Housing Program Rules and Procedures, as more particularly applied by the Common Council of the City of White Plains in findings made in the course of environmental review in connection with site plan approval as set forth in Exhibit “E” hereto] [or] [\_\_\_\_\_] (the “Affordable Housing Requirements”). ]

**SECTION 2.18: Agreement to Provide Information; Annual Reports.**

(a) The Company shall provide to the Agency annually, on or before February 15 for the previous calendar year, a certified statement and documentation on such form as the Agency shall prescribe (the “**Annual Report**”): (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Project, by category, including full time equivalent independent contractors or employees of independent contractors and retail and commercial tenants and subtenants that work at the Project Facility; (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the Application is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created; and (iii) containing such other and further information as the Agency shall reasonably require in order to monitor the Company’s compliance with its obligations under Sections 2.13 (Project Investment), 2.14 (Local Labor), 2.15 (Green Building Technology), 2.16 (Residential Rental Project) and 2.17 Affordable Housing) of this Agreement.

(b) To verify the employment level at the Project Facility and the information contained in the Annual Report, the Company shall submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a Tax Department Form NYS-45 as of the last payroll date in the month of December of such year (the “**NYS-45**”). In the event that some or all of the Project Employees employed at the Project Facility constitute contract employees or employees of retail and commercial tenants and subtenants at the Project Facility, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Report of the employers relating to such Contract Employees and Tenant Employees.

(c) The Company further agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Project and 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 or the Public Authorities Reform Act of 2009, as amended from time to time, or any of the Project Documents, including, without limitation: (i) proof of payment of all taxes and PILOT Payments required under the PILOT Agreement and/or Section 2.3 hereof; and (ii) employment and compensation information in respect of persons employed at the Project Facility, including the projected employment described in Section 1.4(s) above. The Company acknowledges that such information will include, inter alia, employment data of retail and commercial tenants and subtenants at the Project Facility; and the Company agrees to require, in its agreements with such tenants and subtenants, that such third parties provide such information as the Agency may require in order to comply with its statutory and regulatory reporting obligations as described

above. Such information shall be provided within thirty (30) days following written request from the Agency.

### **ARTICLE III**

#### **EVENTS OF DEFAULT; REMEDIES; LIMITATION ON COMPANY BENEFITS**

**SECTION 3.1: Events of Default.** Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) The failure of the Company to observe and perform any covenant, condition or agreement on its part to be performed under this Agreement, and such failure shall be continuing sixty (60) days after written notice of same to the Company; provided that, if such default is capable of being cured but cannot be cured within such sixty (60) day period, the failure of the Company to commence to cure within such sixty day period and to diligently prosecute the same;

(b) The Company shall have failed to complete Project Construction on or before the [3<sup>rd</sup>] anniversary of the date of this Agreement, subject to Unavoidable Delay.

(c) Any sale, conveyance, lease or other change of ownership of the Company's interest in the Project Facility or any part thereof, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, except as permitted under this Agreement.

Notwithstanding the foregoing, the Agency shall not unreasonably refuse to extend, for a period not to exceed twelve (12) months, the compliance date set forth in subparagraph “(b)” above upon a showing that the Company is proceeding diligently and in good faith to complete Project Construction. Any further extension shall be in the discretion of the Agency upon such terms and conditions as it may require.

#### **SECTION 3.2: Remedies on Default.**

(a) Whenever any Event of Default shall have occurred and be continuing hereunder, the Agency may take whatever action at law or in equity as may appear necessary or desirable, including an action for damages, injunction or specific performance, provided, however that the following remedial steps shall not be exercised by the Agency unless and until sixty (60) days shall have elapsed after written notice of such Event of Default, has been given to the Company as provided in Section 3.1(a) above:

(i) The Agency may terminate the Sale Tax Letter or require the Company to surrender the Sales Tax Letter to the Agency for cancellation; or

(ii) The Agency may terminate this Agreement, in which case the Company shall be responsible for the repayment to the Agency of some or all of the Company Benefits derived by the Company hereunder to the extent provided in Section 3.4 below.

(b) Further, in the event that the Company shall fail to submit or furnish to the Agency or to the Tax Department any return or report required under this Agreement, or shall fail to provide to the Agency upon request such information as the Agency shall reasonably require in order to discharge its reporting obligations to the Tax Department, the Office of the New York State Comptroller or any other department or agency of the State or of the County of Westchester, as in effect at any time during the term of this Agreement, within sixty (60) days after written notice to the Company that such return, report or information is required hereunder, then the Agency shall have the right to require that the Company pay to the Agency, as a return of Company Benefits conferred by the Agency, the amount of all Company Benefits (as hereinafter defined) derived or taken by the Company during the period covered by such return, report or other information; and the foregoing shall survive the expiration or earlier termination of this Agreement.

(c) Upon the termination of this Agreement pursuant to this Section 3.2 or Section 4.16(a), the Agency, without any consideration, shall immediately convey to the Company all the Agency's right, title and interest in and to the Project Facility, including without limitation, the Facility Realty and the Project Equipment. The Company agrees to pay all reasonable expenses and taxes, if any, applicable to or arising from such transfer of title or interest.

**SECTION 3.3: Remedies Cumulative.** The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

**SECTION 3.4: Recapture of Company Benefits.**

It is acknowledged by the Company that the Agency is entering into this Agreement in order to provide financial assistance (“**Company Benefits**”, as hereinafter more particularly defined) to the Company for the Project principally upon the assumption and expectation that [(i) the Company will maintain certain minimum levels of Project Employees (as defined below) within the County during the term of this Agreement], [(ii) the Company will employ Local Workers in Project Construction in accordance with the Agency's Local Labor Policy], [(iii) the Company will maintain the residential apartment units contained in the Project Facility as rental units, a number of which will be “affordable” in accordance with the Affordable Housing Requirements set forth in Section 2.17 hereof], and [(iv) the Company will \_\_\_\_\_], thereby to accomplish the public purposes of the Act; and the Company and the Agency acknowledge and agree that such expectations are of essential importance to the Agency and the principal basis upon which the Agency had provided, is providing and will hereafter provide the above-mentioned Company Benefits. In consideration therefor, the Company hereby agrees as follows:

(a) If there shall occur a Recapture Event (as defined below) after the Commencement Date and prior to December 31, 20[\_\_\_], the Company shall pay to the Agency (except as otherwise specified below) as a return of Company Benefits conferred by the Agency, the Proportional Amount (as hereinafter defined) of all of the Company Benefits (as defined below) utilized, received or obtained by the Company pursuant to this Agreement, multiplied by the applicable “Vesting Factor” set forth in subparagraph (b) below.

(b) For purposes of this Agreement, the following terms shall have the meanings hereinafter set forth:

The term “**Company Benefits**” shall mean monetary savings (*i.e.*, the amount of money which would have been payable by the Company but for the interest of the Agency in the Project or the Project Facility), including, collectively:

(1) the amount of Sales Taxes which would have been payable upon the purchase or lease of Exempt Property but for the exemption therefrom afforded by the Agency under this Agreement; and

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

(a) any real estate tax benefits which have accrued to the benefit of the Company during such time as the Agency had jurisdiction or control over the Facility Realty by reason of the Agency's involvement with the Project, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement or Section 2.3 hereof from the amount of payments which the Company would have been required to pay during the term of this Agreement with respect to real estate taxes (inclusive of all such taxes payable to the County, the Town, the Villages, the School District, and any governmental or quasi-governmental subdivision thereof) had no Agency Tax Exemption been available during such term; and

(b) any exemption from any applicable mortgage recording tax, transfer tax, and filing and recording fees derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement; and

(c) any benefits received by the Company by means of a discount on its utility costs at the Project Facility through the Con Edison Incentive Rate Program (“Utility Exemption”), the amount of any such benefits to be measured by the amount of utility charges that the Company would have been required to pay to the utility company if the Premises were not subject to the Utility Exemption. Recapture of such benefits shall be effected by payment directly to Con Edison, and the Company shall furnish proof of such payment to the Agency.

The term “**Project Employee**” shall mean, with respect to any specific date or period, a person directly employed on such date or during such period at the Project Facility by the Company or its affiliates or commercial or retail tenants or subtenants, and who shall on such date or for such period have carried out the terms of such employment on a “full-time basis” at the Project Facility. “Full-time basis” shall mean for at least a 35-hour week, except that two part-time employees working at least 20 hours per week per employee and together working an aggregate of 40 hours per week shall be counted as one “Project Employee”. Independent contractors and consultants primarily engaged in facilitating the operations of the Company or its affiliates or commercial or retail tenants or subtenants in the conduct of their respective business operations at the Project, as contemplated hereunder, and employed by the Company or its affiliates or commercial or retail tenants or subtenants or a by Person with whom the Company or its affiliates or commercial or retail tenants or subtenants has a long-term (i.e., one year or greater) contractual relationship to provide such contractors or consultants, shall be considered Project Employees only if (i) they work regular employee hours providing services to the Company or its affiliates or commercial or retail tenants or subtenants, (ii) they work in the ordinary course of the business of the Company or its affiliates or commercial or retail tenants or subtenants, and (iii) such persons perform such work primarily on-site at the Project Facility.

The term “**Applicable Base Employment Number**” shall mean [\_\_\_\_\_ (\_\_\_)] Project Employees reasonably expected to be employed at the Project Facility, as set forth in Section 1.4(s) hereof.

The term “**Proportional Amount**” shall mean:

(1) in respect of a Recapture Event described in subparagraph “(1)” of the definition of that term below, the ratio obtained by dividing (x) the number resulting from subtracting the number of Project Employees employed at the Project Facility, on the relevant date or during the relevant period, from the Applicable Base Employment Number, by (y) the Applicable Base Employment Number; or

(2) in respect of a Recapture Event described in subparagraph “(2)” of the definition of that term below, the ratio obtained by dividing (x) the number resulting from subtracting the number of Local Workers employed at the Project Facility during Project Construction, from the number of Local Workers required under Section 2.14, by (y) the number of Local Workers required under Section 2.14; or

(3) in respect of a Recapture Event described in subparagraph “(3)” of the definition of that term below, the ratio obtained by dividing (x) the number resulting from subtracting the number of apartment units in the Project Facility maintained as rental units in accordance with the Residential Rental Project Requirement set forth in Section 2.16 on the relevant date or during the relevant period, from the number of apartment units in the Project Facility, by (y) the number of apartment units in the Project Facility; or

(4) in respect of a Recapture Event described in subparagraph “(4)” of the definition of that term below, the ratio obtained by dividing (x) the number resulting from subtracting the number of apartment units in the Project Facility maintained as “affordable” in accordance with the Affordable Housing Requirements set forth in Section 2.17 on the relevant date or during the relevant period, from the number 13, by (y) the number 13; or

(5) in respect of a Recapture Event described in subparagraph “(5)” of the definition of that term below, the ratio obtained by dividing (x) the number resulting from subtracting the actual Project Investment made by the Company on or before the Required Investment Date, from the Required Investment Amount, by (y) the Required Investment Amount; or

(6) in respect of a Recapture Event described in subparagraph “(6)” of the definition of that term below, the ratio 1/1.

The term “**Vesting Factor**” shall mean the applicable percentage indicated in the following table:

<b>Date of Occurrence of Recapture Event</b>	<b>Vesting Factor</b>
From the date of this Agreement through December 31, 20[__]	100%
From January 1, 20[__], through December 31, 20[__]	95%
From January 1, 20[__], through December 31, 20[__]	90%
From January 1, 20[__], through December 31, 20[__]	85%
From January 1, 20[__], through December 31, 20[__]	80%
From January 1, 20[__], through December 31, 20[__]	75%
From January 1, 20[__], through December 31, 20[__]	70%
From January 1, 20[__], through December 31, 20[__]	65%

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

[(1) From and after January 1, 20[\_\_], through and including December 31, 20[\_\_], the average number of Project Employees employed at the Project Facility during any calendar year shall be fewer than the Applicable Base Employment Number; or]

[(2) The Company shall fail to comply with the Local Labor Requirement set forth in Section 2.14; or]

[(3) The Company shall fail to maintain the residential apartment units contained in the Project Facility as rental units in accordance with the Residential Rental Project Requirement set forth in Section 2.16; or]

[(4) The Company shall fail to maintain not fewer than [\_\_\_\_\_] (\_\_) of the residential apartment units in the Project Facility as

“affordable” in accordance with the Affordable Housing Requirements set forth in Section 2.17; or]

[(5) The Company shall fail to invest not less than \$[\_\_\_\_\_] (the “**Required Investment Amount**”) in the construction, improving, equipping and furnishing of the Project Facility prior to the Completion of Project Construction, but not later than December 31, 20[\_\_\_], subject to Unavoidable Delay (the “**Required Investment Date**”); or]

(6) The Project Facility or the Project shall cease to be a “project” within the meaning of the Act.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred to the extent that 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 Project Facility, or (ii) the inability of the Company after the Project Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Project Facility to substantially its condition prior to such Loss Event, or (iii) interference with the Company’s possession or use of the Project Facility, which event shall have arisen in good faith through no fault on the part of the Company or any Affiliate.

(c) In accordance with subdivision 3 of Section 875 of the General Municipal Law, and as a condition precedent to receiving or benefiting from Sales Tax Exemption, the Company hereby agrees that the Agency shall recover, recapture, receive, or otherwise obtain from the Company, or any other agent or sub-agent appointed in connection with the Project, State sales and use tax exemption benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by this Agreement. The Company, and any such other person or entity shall cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from such person under Article Twenty-eight of the Tax Law, together with any relevant penalties and interest due on such amounts.

(d) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event or disposition of the Project Facility or any portion thereof made during the term of this Agreement, which notification shall set forth the terms of such Recapture Event and/or disposition. The Company shall furnish to the Agency annually during the term hereof, not later than February 1 of each year during the term of this Agreement, commencing February 1, 20[\_\_\_], a written summary of employment at the Project Facility for the immediately preceding year, in such form and detail as the Agency shall reasonably require,

including the numbers of Project Employees employed at the Project Facility during all or any part of such year.

(e) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at the underpayment rate set by the commissioner of taxation and finance pursuant to §1142 of the Tax Law and then in effect (referred to herein as the “**Prime 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).

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

(g) Except as modified in this Section 3.4 or otherwise expressly provided hereby, the terms and conditions set forth in the Agency’s Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted, as in effect on the date hereof, a copy of which is annexed hereto as Exhibit “B”, are incorporated herein and made a part hereof.

## ARTICLE IV

### MISCELLANEOUS PROVISIONS

**SECTION 4.1: Amendments.** This Agreement may be amended only by a written instrument executed and delivered by the parties hereto.

**SECTION 4.2: Notices.** All notices, certificates or other communications hereunder shall be sufficient if sent (a) by registered or certified United States mail, postage prepaid, (b) by a nationally recognized overnight delivery service, charges prepaid or (c) by hand delivery, addressed, as follows:

- (i) if to the Agency, to the Chairman, County of Westchester Industrial Development Agency, 148 Martine Avenue, White Plains, New York 10601 with a copy to Oxman Law Group, PLLC, 120 Bloomingdale Road, Suite 100, White Plains, NY 10605, Attn: Marc S. Oxman, Esq.
- (ii) if to the Company, to [\_\_\_\_\_],  
Attn: [\_\_\_\_\_], with a copy to [\_\_\_\_\_  
\_\_\_\_\_], Attn: [\_\_\_\_\_], Esq.
- (iii) if to the Permitted Mortgagee, \_\_\_\_\_. Failure of the Agency to provide notice to the Permitted Mortgagee shall not subject the Agency to any liability whatsoever.

The Agency and the Company may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication here under shall, except as may expressly be

provided herein, be deemed to have been delivered or given (i) three (3) business days following posting if transmitted by mail, (ii) one (1) business day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

**SECTION 4.3: Prior Agreements Superseded.** Except otherwise provided herein, this 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 Project Facility.

**SECTION 4.4: Severability.** If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**SECTION 4.5: No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency or the Company in exercising any rights hereunder or under any other Project Document shall operate as a waiver.

**SECTION 4.6: Effect of Discontinuance of Proceedings.** In case any proceeding taken by the Agency under this Agreement on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

**SECTION 4.7: Agreement to Pay Attorney's Fees and Expenses.** In the event the Company should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expense so incurred.

**SECTION 4.8: Inspection of Facility.** The Company will permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice, to enter the Project Facility but solely for the purpose of (y) assuring that the Company is operating the Project Facility, or is causing the Project Facility to be operated, as a qualified "project" within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Project Facility and/or the use

thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Project Facility as such latter obligation is and shall remain solely the obligation of the Company.

**SECTION 4.9: Employment Opportunities and Guidelines.** The Company shall ensure that all employees and applicants for employment by the Company or its Affiliates with regard to the Project Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed on the electronic database of the New York State Department of Labor Community Services Division, and of the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) (and any successor statute, including the Federal Workforce Investment Act of 1998) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to first consider, and cause each of its Affiliates at the Project Facility to first consider, persons eligible to participate in the Federal Job Training Partnership programs (or similar programs established under successor statutes) who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Service Division of the New York State Department of Labor for such new employment opportunities. During the term of this Agreement, in accordance with the Federal Workforce Investment Act of 1998, the Company will cause its appropriate human resources personnel to consult with the Office of Employment Services of the Department of Social Services of the County on a regular basis to identify and assess workforce development opportunities at the Project Facility.

**SECTION 4.10: Effective Date.** This Agreement shall become effective upon its execution and delivery.

**SECTION 4.11: Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Agency and the Company and their respective successors and assigns.

**SECTION 4.12: No 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. Without limiting the foregoing, it is expressly understood and agreed that neither this Agreement nor any Project Document shall grant any right of occupancy to the Project Facility to any party other than the Company.

**SECTION 4.13: Law Governing.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

**SECTION 4.14: Waiver of Trial by Jury.** The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Project Facility or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of

a jury trial and the right of re-entry or repossession shall survive the termination or expiration of this Agreement.

**SECTION 4.15: Non-Discrimination.** (a) At all times during the term of this Agreement, the Company shall not 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 at the Project 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.

(b) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Agreement, state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

**SECTION 4.16: Termination.**

(a) **Option to Terminate.**

(1) Subject to the terms and conditions hereinafter set forth, the Company shall have the option to terminate this Agreement at any time. The Company shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Company to an Authorized Representative of the Agency stating that the Company has elected to exercise its option under this Section 4.16(a) and the date (the “**Termination Effective Date**”) on which such termination is to be effective and the payment required under Section 4.16(a)(2) is to be made.

(2) Upon the termination of this Agreement by the Agency pursuant to Section 3.2(a) above, or upon the termination of this Agreement by the Company pursuant to this Section 4.16(a), on the Termination Effective Date: (A) the Agency shall sell and convey, and the Company shall purchase, the Agency's interest in the Project Equipment for a purchase price of one dollar (\$1.00); and (B) the Company shall pay to the Agency any and all amounts due from the Company hereunder by reason of such termination or otherwise.

(b) **Conveyance on Termination.** Upon the termination of this Agreement for any reason, or upon the expiration of this Agreement on the Project Expiration Date (as hereinafter defined), the Agency will deliver or cause to be delivered to the Company all necessary documents conveying to the Company all of the Agency's right, title and interest in and to the Facility Realty and the Project Equipment.

(c) **Expenses of the Agency.** The Company shall pay the reasonable expenses of the Agency, including any reasonable fees and disbursements incurred by the

Agency's Project Counsel and/or the Agency's general counsel, in connection with the transactions contemplated under this Section 4.16.

(d) **Survival of Company's Obligations.** Upon conveyance of the Agency's interest in the Facility Realty and the Project Equipment pursuant to this Section, this Agreement and all obligations of the Company hereunder shall be terminated, other than its obligations under Sections 2.2(f), 2.3, 2.4, 2.5, 3.4 and 4.7 hereof, which shall survive such termination.

**SECTION 4.17: Recourse under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent (including counsel to the Agency) 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 (including counsel to the Agency) of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County 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 or under any Project Document; and provided further that recourse against the Agency hereunder shall be limited to the Agency's interest in the Project Facility. The obligations and agreements of the Company contained herein and in the other Project Documents shall be deemed the obligations and agreements of the Company, and not of any shareholder, employee, agent, officer or director in his or her individual capacity, and the shareholders, employees, agents, officers and directors of the Company shall not be liable personally or otherwise hereon or thereon or be subject to any personal or other liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

**SECTION 4.18: Date of Agreement for Reference Purposes Only.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written.

**SECTION 4.19: Counterparts.** This Agreement may be executed in counterparts, each of which shall to be original and all of which shall constitute but one and the same instrument.

**SECTION 4.20: SPECIAL COVENANTS.** NO WARRANTY OF CONDITION OR SUITABILITY BY AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT MATERIALS AND THE PROJECT EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT MATERIALS AND THE PROJECT EQUIPMENT OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT MATERIALS AND THE PROJECT EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A

PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

**SECTION 4.21: Term.** Subject to earlier termination by the Agency pursuant to Section 3.2(a) or by the Company pursuant to Section 4.16(a) above, the term of this Agreement shall end on the expiration or termination of the PILOT Agreement, or if there shall be no PILOT Agreement, [\_\_\_\_\_], 20[ ] (the “**Project Expiration Date**”).

**SECTION 4.22: Rights of Lenders.**

For the purposes of this Agreement, the term “mortgage” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project and used in the jurisdiction in which the Project is located, such as, without limitation, mortgages, deeds of trust, mortgage deeds, security deeds and conditional deeds, as well as financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms “holder of a mortgage” and “mortgagee” shall mean the secured party under any of the foregoing instruments (including the holders of any mortgage on all of the Company’s right, title and interest under this Agreement) or the prospective secured party if the instruments have not been delivered. Notwithstanding the foregoing, the term “mortgage” shall not include the PILOT Mortgage and the term “holder of a mortgage” and “mortgagee” shall not include a holder of the PILOT Mortgage or the mortgagee thereunder.

The Company and every successor and assignee of the Company is hereby given the right by the Agency in addition to any other rights herein granted, without any requirement to obtain the Agency’s consent, to grant a mortgage or a security interest in the Company’s interest in the Project, the Company Lease, the Agency Sublease and/or this Agreement under one or more mortgages or security agreements and to assign its interest in this Agreement and/or the Agency Sublease as collateral security for such mortgage(s),.

If, in accordance with the immediately preceding paragraph, the Company, with respect to all or a portion of the Project and/or the Company’s successors and assigns (including, without limitation, any lessee of the Company, but only with the Company’s prior written consent), shall mortgage or grant a security interest in the Company’s interest in this Agreement, the Company Lease, the Agency Sublease and/or the Project, and if the mortgagee shall send to the Agency (pursuant to the notice provisions of Section 4.2 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee (a mortgagee giving such notice, a “**Notice Lender**”), so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Notice Lender to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) There shall be no renewal, cancellation (except upon the exercise of the Agency’s remedies for default by the Company hereunder), surrender, acceptance of surrender, amendment or modification of this Agreement, the Company Lease or the Agency Sublease, without the

written consent of all Notice Lenders.

(b) In the event of any default by the Company under this Agreement or the Agency Sublease, or the occurrence of a Recapture Event hereunder (other than the termination of this Agreement pursuant to Section 3.2(c) above) the Notice Lender shall have thirty (30) days for a monetary default and sixty (60) days in the case of a Recapture Event or any other default, after notice to the Notice Lender of such default or Recapture Event (which notice shall be given in the manner set forth in Section 4.2, above) to cure or to cause to be cured the Recapture Event or default complained of, at Notice Lender's sole discretion, and the Agency shall accept such performance by or at the instigation of such Notice Lender as if the same had been done by the Company. In the event of a default, an event of default or a Recapture Event which is not susceptible of cure by the Notice Lender, or which is not susceptible of cure by the Notice Lender without first obtaining possession of the Facility, the Notice Lender shall have a reasonable time after notice thereof (a) to obtain possession of the Facility (including, at such Notice Lender's option, possession by a receiver) and, in the case of a default, an event of default or a Recapture Event susceptible of being cured by the Notice Lender, to cure such Recapture Event or default after obtaining possession or (b) in the case of default, an event of default or a Recapture Event not so susceptible of being cured, to institute, prosecute and complete foreclosure proceedings or otherwise acquire the Company's interest under the Agency Sublease; provided, however, the Notice Lender shall not be obligated to continue such possession or to continue such foreclosure proceedings. Any default, event of default or Recapture Event by the Company not susceptible of being cured by the Notice Lender shall be deemed to have been waived by the Agency upon completion of such foreclosure proceedings or upon such acquisition of the Company's interest in the Agency Sublease and this Agreement, it being understood and agreed that the Notice Lender, or its designee, or any purchaser in foreclosure proceedings (including, without limitation, a corporation formed by the Notice Lender) may become the legal owner and holder of the Company's interest under the Agency Sublease and this Agreement through such foreclosure proceedings or by assignment of the Company's interest under the Agency Sublease and this Agreement in lieu of foreclosure. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(c) The Notice Lender shall be given notice by the Agency and the Company of any litigation, arbitration or other proceeding or dispute by or between the parties hereto with respect to this Agreement, the Company Lease and/or the Agency Sublease, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding. In any event, the Notice Lender shall have the right to receive notice from the Agency and the Company of, and a copy of, any award or decision made in said arbitration or other proceeding, whether or not the Notice Lender intervened or became a party.

(d) The Company or any assignee of the Company shall cause the name of the Notice Lender to be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by the Company in respect of the project, and all such policies shall state that the insurance proceeds are to be paid as provided in the mortgage. Any insurance proceeds in respect of the Project shall be paid in the manner specified in the mortgage. If more than one Notice Lender is named as an insured, the insurance proceeds will be paid to the Notice Lender whose mortgage is prior in lien among those so named.

(e) Any award or payment in condemnation or eminent domain in respect of the Project shall be paid to the Notice Lender to be applied in the manner specified in the mortgage. If more than one mortgage is in effect, the funds shall be paid to the Notice Lender whose mortgage is prior in lien among those in effect.

(f) No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payments in condemnation or eminent domain except in accordance with the terms of the mortgage.

(g) Except after the Notice Lender has succeeded to the interest of the Company in the Project, no liability for any payments to be made pursuant to this Agreement or the Agency Sublease, or the performance of any other the Company's covenants and agreements under this Agreement or the Agency Sublease, shall attach to or be imposed upon the Notice Lender, and if the Notice Lender or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Notice Lender or its nominee or designee shall cease and terminate upon assignment of this Agreement, the Company Lease and the Agency Sublease, or abandonment of the Project.

(h) No payment made by the Notice Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or the Agency Sublease; and the Notice Lender having made any payment to the Agency pursuant to the Agency's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefor not later than one year after the date of such payment and has demonstrated that such notice or demand was in fact wrongful, improper or mistaken.

(i) Notwithstanding any provision of this Agreement, the Company Lease or the Agency Sublease to the contrary, foreclosure of a mortgage or any sale of a Company's interest in this Agreement, the Company Lease, the Agency Sublease and/or the Project in connection with a foreclosure, whether by judicial proceedings or by virtue of or in lieu of foreclosure or other appropriate proceedings, or any conveyance of a Company's interest in this Agreement, the Company Lease, the Agency Sublease and/or the Project by the Notice Lender or its nominee, and their respective successors and/or assigns, shall not require the consent or approval of the Agency.

(j) The Agency agrees to amend this Agreement to include any reasonable provisions requested by any Notice Lender with respect to "Rights of Lender" hereunder.

(k) The Company agrees to provide the Agency notice of any "mortgagee" and its address.

The Agency acknowledges and agrees that [\_\_\_\_\_] is a Notice Lender.

**SECTION 4.23: Statutory Certification.** Pursuant to subsection 6(g) of Section 859-a of the General Municipal Law, the Company hereby certifies under penalty of perjury that

it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulation.

[Signatures appear on the following page.]

**EXHIBIT A**

**COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**

**SALES TAX LETTER**

**EXHIBIT B**

**COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY  
POLICY FOR TERMINATION OF AGENCY BENEFITS AND RECAPTURE OF  
AGENCY BENEFITS PREVIOUSLY GRANTED**

## **EXHIBIT C**

### **GREEN BUILDING TECHNOLOGIES**

The Company will incorporate the following Green Building technologies into the Project construction:

## EXHIBIT D

### COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY

#### AGREEMENT FOR RECORDING OF MORTGAGE

This Agreement dated as of \_\_\_\_\_, 20\_\_ (“**Agreement**”), by and among the **COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 148 Martine Avenue, White Plains, New York 10601, party of the first part (“**IDA**” or the “**Agency**”), \_\_\_\_\_, a \_\_\_\_\_ (the “**Company**”), having an office for the transaction of business located at \_\_\_\_\_ (the Agency and the Company being hereinafter collectively referred to herein as “**Mortgagors**” and singly referred to herein as a “**Mortgagor**”), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, having an office for the transaction of business located at \_\_\_\_\_ (the “**Mortgagee**”).

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 788 of the Laws of 1976 of the State of New York, as amended by Chapter 564 of the Laws of 1983 (together with the Enabling Act, the “**Act**”) for the benefit of the County of Westchester and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency and the Company have entered into a commercial “project” (within the meaning of the Act) located within the territorial boundaries of \_\_\_\_\_, in premises generally known as and by the street address \_\_\_\_\_, \_\_\_\_\_, New York, more particularly described in Schedule A annexed hereto (together with the improvements thereto, collectively, the “**Project Facility**”); and

WHEREAS, the project (the “**Project**”) consists [or shall consist] of \_\_\_\_\_; and

WHEREAS, to facilitate the Project, in connection with the financing of the costs of the Project, the Agency and the Company have this day executed and delivered to the Mortgagee (i) a [Mortgage], dated as of \_\_\_\_\_, 20\_\_, and (ii) a [Assignment of Leases], dated as of \_\_\_\_\_, 20\_\_ (collectively, the “**Mortgage**”), all in respect of the Project Facility and other property and interests (collectively, the “**Mortgaged Property**”), and which are intended to be recorded in the Office of the Westchester County Clerk; and

WHEREAS, the Agency has undertaken to file, register or record or cause to be recorded, the Mortgages and certain other loan documents, including, without limitation, a \_\_\_\_\_, creating a lien on and/or a security interest in the Mortgaged Property (the “**Other Loan Documents**”); and

WHEREAS, no mortgage recording tax should be imposed upon the recording of the Mortgages and the Other Loan Documents as a result of (A) said Mortgages and the Other Loan Documents being executed and delivered under the state authority creating the Agency, (B) the use by the Agency of its powers in furtherance of the Project, which Project was deemed by the Agency to be a public purpose essential to the public interest, and (C) the New York State Department of Taxation and Finance having expressed its opinion that the recording of similar documents by similar agencies organized under the Act are operations of said agencies entitled to exemption from the mortgage recording tax.

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

1. The Agency hereby authorizes, designates and appoints the Company as its agent for the purpose of recording the Mortgages and the Other Loan Documents.
2. The Company hereby accepts such appointment and agrees to record or cause to be recorded the Mortgages and the Other Loan Documents as agent of the Agency. The Company agrees to pay all filing, registration and recording fees, and all expenses incident to the execution, acknowledgment, filing, registration and recording of the Mortgages and the Other Loan Documents.
3. The Company agrees to indemnify, defend and hold harmless the Agency, the Mortgagee, and their respective shareholders, officers, directors, employees, agents (other than the Company) and participants (the “**Indemnified Parties**”) from and against any and all liabilities, obligations, claims, damages, losses, penalties, assessments, fines, causes of action and actual expenses (including without limitation attorneys’ costs, disbursements, charges, expenses and reasonable legal fees) imposed upon or incurred by or asserted against the Indemnified Parties, the Mortgaged Property or any of Mortgagee’s interest therein by reason of the filing, registration and recording of the Mortgages and the Other Loan Documents, or the failure to record any of same.
4. All covenants, stipulations, promises, agreements and obligations of the Agency contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenant

or agreement contained in this Agreement or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect of this Agreement, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency, or any person executing this Agreement on behalf of the Agency, either directly or indirectly. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all rights and claims against, every director, officer, shareholder, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement. The obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligation of the State of New York or the County of Westchester, New York, and neither the State of New York nor the County of Westchester, New York shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the Project, the Mortgaged Property and/or the sale or other disposition of the Mortgaged Property.

5. It is expressly understood and agreed that, absent criminal behavior, the sole remedies of Mortgagee (and any successor, assign or receiver thereof) against the Agency in connection with this Agreement, including, without limitation, the breach of any representation and warranty made by the Agency in this Agreement, shall be those remedies provided in the Mortgages, it being expressly agreed that any and all liability of the Agency to the Mortgagee (and any successor, assign or receiver thereof) by reason of the filing, registration and recording of the Mortgages and any Other Loan Document, or the failure to record same, shall be limited as hereinabove set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

(SEAL)

**COUNTY OF WESTCHESTER INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_

Name:

Title:

**[THE COMPANY]**

By: \_\_\_\_\_

Name:

Title:

**[THE MORTGAGEE]**

By: \_\_\_\_\_

Name:

Title: