

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(SUFFOLK COUNTY, NEW YORK)

and

INTERCOUNTY APPLIANCE CORP.

SECOND AMENDED AND RESTATED AGENCY COMPLIANCE AGREEMENT

Dated as of December 1, 2018

Town of Brookhaven Industrial Development Agency

(Assignment of Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility)

THIS SECOND AMENDED AND RESTATED AGENCY COMPLIANCE AGREEMENT, dated as of December 1, 2018 (this “**Agency Compliance Agreement**”), is by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Issuer**”), and INTERCOUNTY APPLIANCE CORP., a business corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 10 National Boulevard, Medford, New York 11763 (the “**Lessee**”).

WITNESSETH

WHEREAS, the Issuer was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the “**Act**”); and

WHEREAS, the Issuer has previously provided its assistance to Intercounty Associates II LLC (the “**Original Company**”) and the Lessee, by issuing its (i) \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the “**Series 2005 Bonds**”), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately 29.77 acre parcel of land located at 10 National Boulevard, Medford, New York, and the construction and equipping thereon of an approximately 250,000 square foot building (collectively, the “**Original Facility**”), and (ii) its additional \$4,500,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2013 (Intercounty Associates II LLC/Intercounty Appliance Corp. 2013 Facility) (the “**Series 2013 Bonds**”; and together with the Series 2005 Bonds, the “**Bonds**”), for the acquisition, construction, renovation and equipping of an approximately 75,000 square foot addition to an existing approximately 250,000 square foot building located at the Original Facility all for use by the Lessee as warehouse and office space for the distribution of appliances (collectively, the “**2013 Facility**”; and together with the Original Facility, the “**Facility**”); and

WHEREAS, the Issuer sold the Facility to the Original Company pursuant to an Installment Sale Agreement, dated as of January 1, 2005, as amended by a certain First Amendment to Installment Sale Agreement (collectively, the “**Original Installment Sale Agreement**”), by and between the Issuer and the Original Company, and memoranda of such Original Installment Sale Agreement were to be recorded in the Suffolk County Clerk’s office; and

WHEREAS, in connection therewith, the Issuer, the Trustee, the LOC Bank, the Original Company and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005, as amended by a certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of September 1, 2103 (collectively, the “**Original PILOT Agreement**”), whereby the Company and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, the Issuer and the Lessee entered into an Agency Compliance Agreement, dated as of January 1, 2005, as amended by that certain Amended and Restated

Agency Compliance Agreement, dated as of September 1, 2013 (the “**Original Agency Compliance Agreement**”); and

WHEREAS, as of the December 13, 2018, the Bonds are deemed paid in full and will be redeemed in accordance with the terms of the Indenture; and

WHEREAS, 10 National Medford LLC (the “**Company**”) has requested the Issuer’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Installment Sale Agreement, the Original PILOT Agreement and other documents in connection therewith, the release of the Original Company from any further liability with respect to the Facility, and the release of the Lessee from certain documents in connection with the Facility, subject to certain requirements of the Issuer, pursuant to a certain Assignment, Assumption and Amendment Agreement, dated December 13, 2018 (the “**Assignment, Assumption and Amendment Agreement**”), by and among the Issuer, the Original Company, the Company and the Lessee;

WHEREAS, the Original Installment Sale Agreement was assigned and amended pursuant to the Assignment, Assumption and Amendment Agreement (the Original Installment Sale Agreement, as so amended shall be hereinafter referred to as the “**Installment Sale Agreement**”); and

WHEREAS, the Company and the Lessee have entered into a certain Lease, dated as of December 13, 2018 (the “**Lease**”), by and between the Company and the Lessee; and

WHEREAS, the Issuer and the Lessee have agreed to amend and restate the Original Agency Compliance Agreement pursuant to this Agency Compliance Agreement.

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

ARTICLE I REPRESENTATIONS AND COVENANTS OF LESSEE

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

(a) The Lessee is a business corporation organized and existing under the laws of the State of New York, is in good standing under the laws of the State of New York and has full legal right, power and authority to execute, deliver and perform this Agency Compliance Agreement. This Agency Compliance Agreement has been duly authorized, executed and delivered by the Lessee.

(b) Neither the execution and delivery of this Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Lessee’s organizational documents, as amended, or any restriction or any agreement or instrument to which the Sublessee is a party or by which it is bound. Under penalty of perjury, the Lessee certifies that it is in substantial compliance

with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

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

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

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

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times until the later of the expiration of the Lessee's use or occupancy of the Facility or the expiration or termination of the Lease (the "Lease Term"), the Lessee shall, at its sole cost and expense, but without duplications of insurance coverage actually supplied by the Company pursuant to the Installment Sale Agreement, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

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

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

(c) Insurance protecting the Issuer and the Lessee against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Lessee under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage), and blanket excess

liability coverage, in an amount not less than \$5,000,000 per occurrence, protecting the Issuer and the Lessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

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

Such insurance shall have a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage).

- (iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).
- (iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000 per occurrence.

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. The company issuing the policies required hereby shall be rated "A"

or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Issuer as an additional insured. All policies evidencing the insurance required by Section 2.1(d)(ii) and (iv) shall name the Issuer and the Lessee as additional insureds. The policies under Section 2.1(a), (b) and (c) shall contain appropriate waivers of subrogation.

(b) The policies (or certificates or binders) of insurance required by Section 2.1(a) and (e) hereof have been deposited with the Issuer on or before the date hereof. A copy of the policy (or certificate or binder) of insurance required by Section 2.1(c) hereof shall be delivered to the Issuer on or before the date hereof. A copy of the policies (or certificates or binders) of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Issuer on or before the Closing Date. The Lessee shall deliver to the Issuer before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Lessee shall furnish to the Issuer and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Agency Compliance Agreement. The Lessee shall provide such further information with respect to the insurance coverage required by this Agency Compliance Agreement as the Issuer may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 2.1(a) and (e) hereof shall be applied as provided in Section 7.1 of the Installment Sale Agreement, and (ii) the Net Proceeds of the insurance required by Section 2.1(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 2.4 Right of Issuer to Pay Taxes, Insurance Premiums and Other Charges. If the Lessee fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments in lieu of taxes pursuant to the PILOT Agreement, or assessment or other governmental charge required to be paid, for which it is responsible, (ii) to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility during the Lease Term or by any requirement, order or notice of violation thereof issued by any governmental person during the Lease Term, (iv) to pay or Bond any mechanic's Lien which is recorded or filed against the Facility or any part thereof for services or materials supplied to the Lessee (unless contested in accordance with the provisions of Section 3.9 hereof), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Lessee, the Issuer may

pay or cause to be paid such payments in lieu of taxes pursuant to the PILOT Agreement, assessment or other governmental charge, or the premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Issuer until at least ten (10) days shall have elapsed since notice shall have been given by the Issuer to the Company, with a copy of such notice being given to the Lessee (or by the Issuer to the Lessee), and in the case of any tax, assessment or governmental charge, or the amounts specified in clauses (iii) and (iv) of this Section, no such payment shall be made in any event if the Lessee is contesting the same in good faith to the extent and as permitted by this Agency Compliance Agreement, unless an Event of Default under the Installment Sale Agreement shall have occurred and be continuing. No such payment by the Issuer shall affect or impair any rights of the Issuer hereunder arising in consequence of such failure by the Lessee. The Lessee shall, on demand, reimburse the Issuer for any amount so paid or for reasonable expenses or costs incurred in the performance of any such act by the Issuer pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Issuer at two percent (2%) in excess of the prime rate, and such amount, together with interest shall become additional indebtedness.

ARTICLE III SPECIAL COVENANTS

Section 3.1 No Warranty of Condition or Suitability by Issuer. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS.

Section 3.2 Hold Harmless Provisions.

(a) The Lessee agrees that the Issuer and its directors, members, officers, agents (except the Lessee) and employee shall not be liable for, and agrees to defend, indemnify, release and hold the Issuer and its directors, members, officers, agents (except the Lessee) and employees harmless from and against, any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Agency Compliance Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Issuer relating to, in each case, resulting from or arising out of: (i) loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility during the Lease Term, (ii) liability arising from or expense incurred in connection with the Issuer's participation in the leasing of the Facility to the Lessee, including, without limiting the generality of the foregoing, all claims arising from the breach by the Lessee of any of its covenants contained herein, the exercise by the Lessee of any authority conferred upon it pursuant to this Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by

reason of third party claims or by reason of the enforcement of any provision of this Agency Compliance Agreement (including without limitation this Section) or any of the other documents delivered by the Issuer in connection with this Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility prior to or during the Lease Term, (iv) the acquisition, construction, furnishing, equipping, improvement, operation or use of the Facility prior to or during the Lease Term in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility prior to or during the Lease Term, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law prior to or during the Lease Term, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law prior to or during the Lease Term, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit prior to or during the Lease Term, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Lessee in this Agency Compliance Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans arising from conditions or events occurring prior to or during the Lease Term; provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Issuer and its directors, members, officers, agents (except the Lessee) and employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Issuer and its directors, members, officers, agents (except the Lessee) and employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Agency Compliance Agreement, the obligations of the Lessee pursuant to this Section shall remain in full force and effect after the termination of this Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Issuer or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified. The liability of the Lessee to the Issuer hereunder shall in no way

be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Bond Documents by or for the benefit of the Issuer, the Lessee or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Lessee or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Bond Documents by operation of law, either by the Issuer's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Bond Documents, (v) any exculpatory provision contained in any of the Bond Documents limiting the Issuer's recourse to any other security or limiting the Issuer's rights to a deficiency judgment against the Lessee, (vi) any investigation or inquiry conducted by or on the behalf of the Issuer or any information which the Issuer may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Lessee, (x) the release or discharge, in whole or in part, of the Lessee in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Lessee under the Agency Compliance Agreement.

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

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

Section 3.4 Lessee to Maintain Its Existence. The Lessee agrees that during the Lease Term it will not, without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, cease to exist, dissolve, liquidate or otherwise dispose of substantially all of its assets, consolidate with or merge into another limited liability company, corporation or business entity or permit one or more limited liability companies, corporations or business entities to consolidate with or merge into it.

Section 3.5 Qualification in State. The Lessee throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 3.6 Agreement to File Annual Statements and Provide Information. The Lessee shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law (the "GML"), if any. The Lessee shall submit a copy of such annual statement to the Issuer at the time of filing with the Department of Taxation and Finance. The Lessee shall also provide the Agency with the information necessary for the Issuer to comply with

Section 874(9) of the GML. Annually, the Lessee shall provide the Issuer with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Issuer's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Lessee further agrees to provide and certify or cause to be provided and certified whenever requested by the Issuer such information concerning the Lessee, its finances, its operations, its employment and its affairs necessary to enable the Issuer to make any report required by law, governmental regulation, including, without limitation, the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any of the Issuer Documents or Lessee Documents. Such information shall be provided within thirty (30) days following written request from the Issuer.

Section 3.7 Books of Record and Account; Financial Statements. The Lessee agrees to maintain at all times proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Lessee. The Lessee shall furnish to the Issuer and to the LOC Bank within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Lessee.

Section 3.8 Compliance with Orders, Ordinances, Etc.

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

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

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

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

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

(e) Notwithstanding any provisions of this Section, the Issuer retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Issuer shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and

consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Lessee.

Section 3.9 Discharge of Liens and Encumbrances.

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

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

Section 3.10 Employment Opportunities; Notice of Jobs. The Lessee covenants and agrees that, in consideration of the participation of the Issuer in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division, and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300, as amended), as superseded by the Workforce Innovation and Opportunity Act (PL 113-128), in which the Facility is located (collectively, the "**Referral Agencies**"). The Lessee also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.11 Employment at the Facility. The Lessee covenants at all times to create and maintain at the Facility: seventy-two (72) full time equivalent employees throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Lessee or any subsidiary or affiliates of the Lessee, or any consultants, contractors or subcontractors of the Lessee, whose place of employment or workplace is located at the Facility (including the full time equivalent employees of all tenants at the Facility) ("**FTE**").

ARTICLE IV
ENVIRONMENTAL MATTERS

Section 4.1 Environmental Representations of the Lessee. Except as otherwise shown on Exhibit A attached hereto, the Lessee hereby represents and warrants to the Issuer that:

(a) Neither the Facility nor, to the Lessee's knowledge, any property adjacent to or within the immediate vicinity of the Facility is being or has been used in violation of any

applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

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

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

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

(e) All Environmental Permits necessary for the acquisition, construction, furnishing, equipping, improving, ownership, use or operation of the Facility have been obtained and are in full force and effect.

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

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

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

condition of the Facility or the acquisition, construction, equipping, ownership, use, operation, sale, transfer or conveyance thereof.

Section 4.2 Environmental Covenants of the Lessee. The Lessee hereby covenants and agrees with the Issuer as follows:

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

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

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

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

shall also provide the Issuer with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Facility or real property or bodies of water adjoining or in the vicinity of the Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

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

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

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

Section 4.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Lessee contained in this Article IV shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Lessee in and to the Facility or in, to or under the Lease Agreement.

ARTICLE V MISCELLANEOUS

Section 5.1 Execution of Counterparts. This Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.2 Amendments, Changes and Modifications. This Agency Compliance Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of all of the parties hereto.

Section 5.3 Governing Law. This Agency Compliance Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York, without regard or reference to its conflict of laws principles.

Section 5.4 Section Headings Not Controlling. The headings of the several Sections in this Agency Compliance Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agency Compliance Agreement.

Section 5.5 Definitions. All capitalized terms used in this Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Installment Sale Agreement as Schedule A.

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

IN WITNESS WHEREOF, the Issuer and the Lessee have caused this Agency Compliance Agreement to be executed in their respective names by their duly authorized officers, all as of December 1, 2018.

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: Lisa MG Mulligan
Name: Lisa MG Mulligan
Title: Chief Executive Officer

INTERCOUNTY APPLIANCE CORP.

By: _____
Name: Charles Gerhard, III
Title: President

IN WITNESS WHEREOF, the Issuer and the Lessee have caused this Agency Compliance Agreement to be executed in their respective names by their duly authorized officers, all as of December 1, 2018.

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
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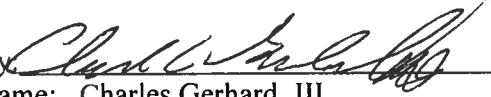
By:  _____
Name: Charles Gerhard, III
Title: President

EXHIBIT A

Exceptions to Representations and Warranties of Lessee

A 1,000 gallon UST was removed from the site in or about 2004 by a prior fee owner.