

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

and

AHIP BELLPORT PROPERTIES LLC

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AMENDED AND RESTATED LEASE AND PROJECT AGREEMENT

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Dated as of June 22, 2017

Originally dated as of December 1, 2008

Amended and Restated as of December 1, 2010

Amended April 4, 2012

Town of Brookhaven Industrial Development Agency  
(AHIP NY Bellport Properties LLC 2017 Facility)

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THIS AMENDED AND RESTATED LEASE AND PROJECT AGREEMENT, dated as of June 22, 2017 (this "**Amended and Restated Lease and Project Agreement**"), is 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, Farmingville, New York 11758 (the "**Agency**"), and AHIP NY BELLPORT PROPERTIES LLC, a Delaware limited liability company organized and existing under the laws of the State of Delaware, and duly authorized to conduct business in the State of New York having its office c/o American Hotel Income Properties REIT LP at 1660 - 401 West Georgia Street, Vancouver, BC V6B 5A1 Canada, Attn: Chief Financial Officer (the "**Company**").

## RECITALS

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

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

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

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 47 of the Laws of 1974 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered under the act to undertake the acquisition, construction, renovation, equipping, and leasing of the Facility defined below; and

WHEREAS, the Agency previously provided its assistance to BRIAD LODGING GROUP YAPHANK, LLC (the "**Original Company**") (i) in connection with the acquisition, construction and equipping of an approximately 60,115 square foot, 128-room hotel facility on approximately 4.6 acres of land (the "**Land**") located at the intersection of Sawgrass Drive and Horseblock Road, Bellport New York 11713 (SCTM # 200-813-1-008.32) (the "**Original Facility**"), title to which was acquired by the Agency pursuant to a deed dated December 19, 2008, and leased by the Agency to the Original Company, with an obligation of the Company to purchase same, for use as a hotel facility that is a tourism destination, (ii) by granting of mortgage liens thereon and security interests therein, and (iii) by providing financial assistance within the meaning of the Act; and

WHEREAS, the Agency leased the Original Facility to the Original Company pursuant to a certain Lease Agreement, dated as of December 1, 2008 (the “**Original Lease Agreement**”), by and between the Agency, as lessor, and the Original Company, as lessee; and

WHEREAS, in connection with the leasing of the Original Facility, the Agency and the Original Company entered into a certain PILOT Agreement, dated as of December 1, 2008 (the “**Original PILOT Agreement**”), whereby the Original Company agreed to make payments-in-lieu-of-taxes on the Original Facility; and

WHEREAS, the Agency previously consented to the assignment of the Original Facility by the Original Company to MCRS BROOKHAVEN LLC (the “**Assignor**”), pursuant to a certain Assignment and Assumption Agreement of Lease Agreement and Consent, dated December 1, 2010, by and among the Agency, the Original Company and the Assignor (the “**2010 Lease Assignment**”) and, simultaneously therewith, entered into a certain Assignment and Assumption of PILOT Agreement, dated December 1, 2010, by and among the Agency, the Original Company and the Assignor; and

WHEREAS, the Agency (i) entered into and leased the Original Facility to the Assignor pursuant to a certain Amended and Restated Lease Agreement, dated as of December 1, 2010, by and between the Agency and the Assignor (the “**2010 Amended and Restated Lease Agreement**”), amending and restating the Original Lease Agreement and (ii) entered into a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of December 1, 2010, by and between the Agency and the Assignor, amending and restating the Original PILOT Agreement (the “**2010 Amended and Restated PILOT Agreement**” or the “**PILOT Agreement**”); and

WHEREAS, the Agency and the Assignor amended the 2010 Amended and Restated Lease Agreement under a certain Amendment of Lease Agreement, dated as of April 4, 2012 (the “**2012 Lease Amendment**”; together with the 2010 Amended and Restated Lease Agreement, the “**Lease Agreement**”), by and between the Agency and the Assignor and countersigned by MCRS Brookhaven Tenant LLC

WHEREAS, the Agency previously consented to a request of the Assignor that the Agency convey, and immediately prior hereto, the Agency conveyed, to the Assignor the Equipment (as defined under the Lease Agreement) other than fixtures affixed to and constituting a part of the building and structures on the Land (the “**Released Property**”; the Original Facility after the conveyance of the Released Property, may be referred to as the “**Facility**”) under the Lease Agreement; and

WHEREAS, in connection with an agreement of sale for the Facility, the Assignor previously requested the Agency’s consent to the assignment of all of the Assignor’s right, title, interest and obligations under the Lease Agreement and the PILOT Agreement, each as amended to date, and certain other agreements in connection with the Facility, to the Assignee, all pursuant to the terms of a certain Assignment and Assumption Agreement and Consent, dated June 22, 2017, by and among the Agency, the Assignor and the Company (the “**Assignment and Assumption Agreement and Consent**”); and

WHEREAS, pursuant to, inter alia, Section 9.3(a) of the 2010 Amended and Restated Lease Agreement, the Lease Agreement and the Facility may not be assigned, in whole or in part, without the prior written consent of the Agency; and

WHEREAS, the Agency consents to the assignment by the Assignor and the assumption by the Company of the Assignor's interests in the Facility and the Agency will thereafter lease the Facility to the Company under this Amended and Restated Lease and Project Agreement; and

WHEREAS, the Lease Agreement and the PILOT Agreement shall be amended and restated in their entirety pursuant to and in accordance with this Amended and Restated Lease and Project Agreement by and between the Agency and the Company; and

WHEREAS, the Agency, by resolution duly adopted on June 14, 2017 (the "**Authorizing Resolution**"), decided to proceed under the provisions of the Act; and

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

WHEREAS, the Company has agreed to sublease the Facility pursuant to the terms of a certain Sublease, dated as of June 22, 2017 (the "**Sublease Agreement**"), by and between the Company, as sublessor, and AHIP NY Bellport Enterprises LLC (the "**Sublessee**"), as sublessee; and

WHEREAS, the Sublessee has agreed to the terms of a certain Management Agreement, dated as of June 22, 2017 (the "**Management Agreement**"), by and between the Sublessee and ONE NY Bellport 2 Management LLC (the "**Manager**").

#### AGREEMENT

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

#### PREAMBLE

The Company confirms, ratifies and restates its assumption of, and does hereby assume and agree to observe and perform, all of the obligations of the tenant under the Lease Agreement and the PILOT Agreement as amended and restated pursuant to this Amended and Restated Lease and Project Agreement.

The Lease Agreement and the PILOT Agreement are hereby amended and restated in their entirety as of the date hereof pursuant to and in accordance with this Amended and Restated Lease and Project Agreement which shall supersede and replace the Lease Agreement and PILOT Agreement; provided that nothing herein shall be construed to relieve the Company of, and the Agency does not hereby waive, any obligations or liabilities arising under, by virtue of or



in connection with the Lease Agreement and PILOT Agreement, all of which obligations and liabilities shall remain in full force and effect.

## ARTICLE I

### DEFINITIONS

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

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

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

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

(b) The Agency has leased the Facility to Company pursuant to this Amended and Restated Lease and Project Agreement, all for the Public Purposes of the State.

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

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

(e) The Agency has been induced to enter into this Amended and Restated Lease and Project Agreement by the undertaking of the Company to maintain the Facility in the Town of Brookhaven, New York, in furtherance of the Public Purposes of the Agency.

(f) By resolution adopted on June 14, 2017, the Agency accepted the Project Application Information, consented to the acquisition by the Company of the leasehold interest in the Facility, and authorized the execution and delivery of the Agency Documents.

(g) The Agency has reviewed and approved the Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement securing the principal amount of \$19,837,143.00 to be executed by the Agency, Company and Sublessee to Deutsche Bank AG, New York Branch, in connection with that certain Loan made to the Company and Sublessee on or about June 22, 2017.

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

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

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

(c) To the actual knowledge of the Company, the Facility and the design and operation of the Facility conforms, and will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. To the actual knowledge of the Company, all Environmental Permits necessary for and the ownership, use or operation of the Facility have been obtained and are in full force and effect. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations relating to the Facility.

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

(e) The Facility is and will continue to be a "project" as such quoted term is defined in the Act. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act.

(f) The transactions contemplated by this Amended and Restated Lease and Project Agreement shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of the State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within the State.

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

(h) The Company will cause all tenants and managers of the Facility, if any, to execute and deliver to the Agency an agency compliance agreement, prior to the occupancy or use of the Facility by such tenant or manager, in form and substance satisfactory to the Agency, and in accordance with the provisions of Section 9.3 hereof.

(i) The Company hereby represents to the Agency that the Facility and the operation thereof are in conformity with New York General Municipal Law (the "GML") Section 862.

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

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

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

(m) Except as stated in the Environmental Reports, to the Company's knowledge, underground storage tanks are not and have not been located on the Facility.

(n) Except as stated in the Environmental Reports, to the Company's knowledge, 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.

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

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

### ARTICLE III

#### CONVEYANCE OF FACILITY

Section 3.1 Agreement to Convey to Agency. The Original Company conveyed or caused to be conveyed to the Agency lien-free, good and marketable, fee simple title to the Land, including any buildings, structures or other improvements thereon, in each case except for Permitted Encumbrances.

Section 3.2 Title Report and Survey. The Company has obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) reflecting all matters of record with respect to the Land and existing Improvements including municipal searches, and (ii) a current or updated survey of each of the Land and the existing Improvements certified to the Agency.

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

Section 3.4 Reserved.

Section 3.5 Identification of Facility Equipment. All equipment which is or may become the Property of the Agency pursuant to the provisions of this Amended and Restated

Lease and Project Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Property of whatever nature affixed or attached to the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Amended and Restated Lease and Project Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Reserved.

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

Section 3.8 Reserved.

#### ARTICLE IV

##### LEASE OF FACILITY; RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby leases the Facility, consisting of the Land as more particularly described in Exhibit A attached hereto and the Improvements, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Amended and Restated Lease and Project Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Company acknowledges delivery of sole and exclusive possession of the Facility (subject to Sections 8.3 and 10.2 hereof), and the leasehold estate created hereby, and the Company accepts possession of the Facility on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:59 p.m. on November 30, 2021 (the "**Lease Term**").

(c) Except as provided in Sections 8.3 and 10.2 hereof, upon paying the rent and additional rent and observing and performing all the terms, covenants and conditions to be

observed or performed by the Company, the Agency shall not take any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility, subject to the terms and conditions of this Amended and Restated Lease and Project Agreement, and will, at the request of the Company and at the Company's sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

(d) The Company shall use and occupy, and shall permit the use and occupancy of, the Facility as a 128-room hotel, including conference rooms, gym, breakfast area, and other amenities, and for no other purpose.

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

(a) The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on January 1, 2018 and on each and every January 1 thereafter during the term of this Amended and Restated Lease and Project Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000 on or before January 1 of each year commencing January 1, 2018 and continuing through the Lease Term.

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

(c) The Company, under the provisions of this Section 4.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. The receipt by the Agency of any rent with knowledge of the breach of any covenant of this Amended and Restated Lease and Project Agreement shall not be deemed a waiver of such breach and no provision of this Amended and Restated Lease and Project Agreement shall be deemed to have been waived by the Agency unless such waiver shall be in writing signed by the Agency. No payment of the Company or receipt by the Agency of a lesser amount than the rent due shall be deemed to be other than on account of the earliest rent due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Agency may accept such check or payment without prejudice to the Agency's right to recover the balance of such rent or pursue any other remedy provided in this Amended and Restated Lease and Project Agreement. All checks tendered to the Agency as and for the rent hereunder shall be deemed payments for the account of the Company. The acceptance by the Agency of rent from anyone other than the Company shall not be deemed to operate as an attornment to the Agency by the payor of such rent or as a consent by the Agency to an assignment or subletting by the Company of the Facility or a portion thereof to such payor, or as a modification of the provisions of this Amended and Restated Lease and Project Agreement.

(d) In the event the Company shall fail to timely make any payment required in Section 4.3(a) or 4.3(b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

(e) All charges, payments, taxes and assessments, together with such other sums as are payable by the Company under this Amended and Restated Lease and Project Agreement, shall constitute additional rent, may be referred to as rent, shall be due and payable as rent under this Amended and Restated Lease and Project Agreement, at the time and in the manner herein provided, and in the event of the nonpayment of same by the Company, the Agency shall have all the rights and remedies with respect thereto as the Agency has for the nonpayment of the rent herein.

(f) This Amended and Restated Lease and Project Agreement, including the rent herein specified, shall be absolutely net to the Agency, and all costs, expenses and obligations of every kind relating to or arising in connection with the Facility, including the Mortgage, and the acquisition, construction, renovation, improvement, maintenance, operation, repair, replacement, financing, lease, and sublease of the Facility, which may arise or become due during the Lease Term shall be paid by the Company.

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Amended and Restated Lease and Project Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF ACQUISITION, USE, OPERATION, MAINTENANCE, REPAIR, REPLACEMENT OR MODIFICATION OF THE FACILITY. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT AFFIXED TO OR USED IN CONNECTION WITH THE FACILITY, NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR

INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

## ARTICLE V

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

#### Section 5.1 PILOT Payments.

(a) As long as this Amended and Restated Lease and Project Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (the “**PILOT Payments**”) (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the Town of Brookhaven, South Country School District, Suffolk County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) (the “**Taxing Authorities**”) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency’s interest (the “**Taxes on the Facility**”). The method of calculation for such payments are set forth in Exhibit C attached hereto. PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency’s interest.

(b) The Company shall pay, as PILOT Payments, the amounts calculated in accordance with Exhibit C attached hereto and made a part hereof.

(c) The PILOT Payments under this Amended and Restated Lease and Project Agreement are intended to conform with the PILOT Agreement, and in no event shall there be any expansion, extension or increase in the financial assistance provided thereunder. If the Agency determines that any of such provisions regarding the PILOT Payments do not conform with the PILOT Agreement, at the request of the Agency, Company agrees to amend this Amended and Restated Lease and PILOT Agreement to make such provisions regarding PILOT Payments the same as those set forth in the PILOT Agreement.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT



Payments shall be made directly to the Agency. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to February 10 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

(e) During the Lease Term, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as “**Additional Facilities**”), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company exclusive of the Agency’s interest times the assessment or assessments established for that Tax Year by the respective Taxing Authorities having appropriate assessing jurisdiction. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

(g) In the event that the Agency’s interest in the Facility or any part thereof terminates at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Taxing Authorities, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time of the termination of the Agency’s interest until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Section 5.1 by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency’s interest. The provisions of this subsection (g) shall survive the termination or expiration of this Amended and Restated Lease and Project Agreement. Any rights the Company may have against its respective designees are separate and apart from the terms of this subsection (g), and this subsection (g) shall survive any transfer from the Agency to the Company.

(h) In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company under this Section 5.1 shall, to such extent, be null and void.

(i) In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company under this Section 5.1, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

(j) As long as this Amended and Restated Lease and Project Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Amended and Restated Lease and Project Agreement (or the PILOT Agreement). In that event, such complaining party shall be entitled to receive a credit against future PILOT Payments to be paid pursuant to this Amended and Restated Lease and Project Agreement, as and when collected by the Agency or the respective Taxing Authorities (as the case may be), in an amount equal to any refund that such complaining party would be entitled to receive if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's interest therein; provided, however, that the Agency shall have no obligation to provide a credit against PILOT Payments which it has remitted to any of the respective Taxing Authorities before the date the Agency receives written notice from the complaining party that it seeks a credit. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of the Amended and Restated Lease and Project Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

(k) The Company, in recognition of the benefits provided under the terms hereof, including, but not limited to, the PILOT Payments set forth in Exhibit C hereto, and for as long

as the Amended and Restated Lease and Project Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the GML) with respect to the Facility. The Company, however, reserves any such rights with respect to the Additional Facilities as referred to in subsection (f) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

Section 5.2 Reserved.

Section 5.3 Reserved.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency entered into the Lease Agreement and the PILOT Agreement in order to provide financial assistance to the Company, or its predecessors in interest, for the Facility and to accomplish the public purposes of the Act. In consideration therefor, and in consideration of the Agency entering into this Amended and Restated Lease and Project Agreement, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event on or after the Closing Date but on or before December 31, 2018, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2019, but on or before December 31, 2019, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty six and two-thirds percent (66⅔%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2020, but on or before December 31, 2020, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty three and one-third percent (33⅓%) of the Recaptured Benefits; and

(iv) If there shall occur a Recapture Event on or after January 1, 2021, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits.

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, received by the Company that accrue on or after the Closing Date, derived solely from the Agency’s participation in the transaction contemplated by the Amended and Restated Lease and Project Agreement including, but not limited to, the amount equal to 100% of real property tax abatements granted pursuant to Section 5.1 hereof that accrue on or after the Closing Date (the “**Real Property Tax Abatements**”); which Recaptured Benefits from time to time shall, upon the occurrence of a

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

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

(i) The occurrence and continuation of an Event of Default under this Amended and Restated Lease and Project Agreement (other than as described in clause (iv) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, provided hereunder; or

(ii) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Company from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(iv) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in Section 8.12 of this Amended and Restated Lease and Project Agreement, which, in the sole judgment of the Agency, failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(v) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company’s, the Sublessee’ s or the Manager’s activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.12 hereof in any Tax Year, but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due hereunder on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the PILOT Payments may be made each Tax Year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.12 hereof.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Agency determines in its sole discretion that the Recapture Event shall have arisen as a result of (i) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its

affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and at any other time upon request of the Agency, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

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

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

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

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

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

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

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

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

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges (other than PILOT Payments) so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the

Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts; which such obligation shall survive the expiration or termination of this Amended and Restated Lease and Project Agreement.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency, official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the period of any construction, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay or cause to be paid, 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, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the period of any construction, 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 which the Company, the Sublessee, the Manager, or any permitted sublessee or manager is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company, the Sublessee, the Manager, or any permitted sublessee or manager who are located at or assigned to the Facility. This coverage shall be in effect from and after the Closing Date or on such earlier date as any employees of the Company, the Sublessee, the Manager, any permitted sublessee, any manager, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency, the Company, the Sublessee and the Manager against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 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 \$10,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$10,000,000 (combined single limit or equivalent protecting the Agency, the Company, the Sublessee and the Manager against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$10,000,000 combined single limit or equivalent, protecting the Agency and the Company 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 period of any construction.

(d) During the period of any construction, (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company 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)  
Explosion Hazard  
Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have 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).

(iii) Comprehensive 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.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender 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 Agency 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.

(f) Liquor liability insurance, in an amount not less than \$10,000,000.00 per occurrence, annual aggregate, including coverage for bodily injury and property damage for which an insured may be held liable by reason of: causing or contributing to the intoxication of any person, furnishing alcoholic beverages to any person under the legal drinking age or under the influence of alcohol; or violating any statute, ordinance, or regulation relating to the sale, gift, distribution, or use of alcoholic beverages.



(g) Such other insurance on or in connection with the Facility and the activities thereat as the Agency may reasonably require from time to time.

(h) The Agency does not in any way represent that the insurance specified in this Amended and Restated Lease and Project Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Company's business or interests.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a), (c), (d) and (f) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. The insurance shall be written with deductible amounts acceptable to the Agency. All policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) and (f) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The certificates of insurance required by Section 6.4(a), (b), (c), (e) and (f) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the certificates of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any period of construction. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Amended and Restated Lease and Project Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Amended and Restated Lease and Project Agreement as the Agency may from time to time reasonably require.

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

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

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 7.1 Damage or Destruction of the Facility.

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

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

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

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

(iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to either the Lender if required pursuant to the applicable Mortgage and Loan to be held and applied in accordance with the Loan Documents or, if no Loan is then outstanding, to the Company for the replacement, repair, rebuilding, restoration or relocation of the Facility as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and

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

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

(i) the Facility shall be in substantially the same condition and shall be consistent with the quality of the Facility as existed prior to the damage or destruction;

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

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

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

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration or relocation, the Company shall nonetheless complete the work, or cause the work to be completed pursuant to the terms of this Amended and Restated Lease and Project Agreement, and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment that portion of the costs thereof in excess of

such Net Proceeds. All such repairs, replacements, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall not repair, replace, rebuild, restore or relocate the Facility, it shall be deemed to have exercised its option to terminate this Amended and Restated Lease and Project Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be (x) if a Loan is outstanding, applied in accordance with the Loan Documents or (y) applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company. Subject to the terms of any Loan Documents, if an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

Section 7.2 Condemnation.

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

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

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

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

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to either the Lender if required pursuant to the applicable Mortgage and Loan to be held and applied in accordance with the Loan Documents or, if no Loan is then outstanding, to the Company for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and

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

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

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;

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

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

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

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

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

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

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

## ARTICLE VIII

### SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

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

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

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

only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Amended and Restated Lease and Project Agreement, or any other Transaction Document.

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

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Amended and Restated Lease and Project Agreement, (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned, and (v) not change, directly or indirectly, more than 49% of the ownership or control of the Company or sell or transfer, directly or indirectly, more than 49% of the equity interests in the Company, except with consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned.

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

Section 8.5 Agreement to File Annual Statements and Provide Information. If applicable, the Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the GML in such form and substance as the Agency may reasonably require. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, and at such other times as the Agency may request, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Facility, or the Company, its finances, its operations, its employment and its affairs as the Agency deems necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State



Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees and managers at the Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee or manager to enter into an Agency Compliance Agreement in form and substance satisfactory to the Agency.

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

Section 8.7 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee, tenant, manager, or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any work thereat, 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 over the Facility or any part thereof, or of any work thereat, or of any use, manner of use or condition of the Facility or any part thereof or of any companies or associations insuring the premises.

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

Section 8.8 Environmental Matters. The Company hereby covenants and agrees with the Agency as follows:

(a) The Company shall perform all work at, and use, operate and manage, the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, managers, licensees and occupants of the Facility to perform all work at, and to use, operate and manage, the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and 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 Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, managers, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits, if any.

(c) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the 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 Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the 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 Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the 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.

(d) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Company, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the

remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(e) If at any time the Agency obtains any notice or information that the Company or the Facility, or the use or operation thereof or any work thereat may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the 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 Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 8.8(d) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

(f) Notwithstanding the foregoing provisions, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in this Section 8.8 by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, or the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency.

(g) Notwithstanding the provisions of this Section 8.8, if, because of a breach or violation of the provisions of this Section 8.8 (without giving effect to subsection (f)), any of the Indemnified Parties shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary, in the opinion of the Indemnified Parties, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(h) Notwithstanding any provisions of this Section 8.8, the Agency (and any of the other Indemnified Parties) retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances as provided herein. In any such defense of itself, the Agency, on behalf of itself and any of other Indemnified Parties, 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 Company.

#### Section 8.9 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within sixty (60) days of the filing or perfection thereof.

Section 8.10 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 8.11 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the 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) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees, and shall cause any and all sublessees and managers to agree, that they will, except as otherwise provided by collective bargaining contracts

or agreements to which they are parties, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.12 Employment at the Facility. The Company hereby agrees to create and maintain at all times, or cause the Sublessee and the Manager to create and maintain at all times, at the Facility: thirty-six (36) full time equivalent employees as of the Closing Date and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, the Sublessee or the Manager, or any consultants, contractors or subcontractors of the Company, the Sublessee or the Manager, or any subsidiary or affiliates of the Company, the Sublessee or the Manager, whose place of employment or workplace is located at the Facility (“FTE”).

## ARTICLE IX

### RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

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

#### Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of equipment affixed to and made part of the Facility. In any instance where the Company determines that any item of equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary,

the Company, may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

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

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

### Section 9.3 Assignment and Subleasing.

(a) Except pursuant to the Sublease Agreement and the Management Agreement, this Amended and Restated Lease and Project Agreement may not be assigned, in whole or in part, and the Facility may not be subleased or managed, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed, but shall be subject to the dates of the Agency's board meetings, and which consent may be fully and effectively given by the execution and delivery of an Agency Compliance Agreement by an Authorized Representative of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

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

(ii) the assignee, sublessee or manager shall assume the obligations of the Company hereunder to the extent of the interest assigned, subleased or delegated;

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

(iv) neither the validity nor the enforceability of the Amended and Restated Lease and Project Agreement shall be adversely affected thereby;

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

(vi) any sublessee or manager will execute and deliver an agency compliance agreement, in form and substance satisfactory to the Agency.

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

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

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

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

#### Section 9.4 Merger of Agency.

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

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

### ARTICLE X

#### EVENTS OF DEFAULT AND REMEDIES

##### Section 10.1 Events of Default Defined.

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

(i) the failure by the Company to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof, which is not cured within fifteen (15) days after written notice to the Company;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (f) or (i), 6.3, 6.4, 6.5, 8.2, 8.4, 8.8, 8.12, 9.3, 10.4 and 10.6 hereof, which in the case of only Sections 6.3(ii), 8.4, and 10.6 is not cured within thirty (30) days after written notice to the Company;

(iii) the failure by the Company to pay or cause to be paid PILOT Payments or the Recapture Benefits, in each case on the dates due, beyond any applicable notice and cure period;

(iv) the occurrence and continuation of a Recapture Event;

(v) any representation or warranty of the Company herein, in any of the Company Documents or in the Project Application Information shall prove to have been false or misleading in any material respect;

(vi) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii), (iii) and (iv)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency;

(vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within sixty (60) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for sixty (60) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default, beyond any applicable notice and cure period, under the Mortgage, if any, shall have occurred and be continuing beyond applicable notice and cure periods, if any;



(ix) a default under the Sublease or the Management Agreement shall have occurred and be continuing beyond applicable notice and cure periods, if any; or

(x) an Event of Default, beyond any applicable notice and cure period, under an Agency Compliance Agreement, including the Sublessee Agency Compliance Agreement and the Manager Agency Compliance Agreement shall have occurred and be continuing.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 6.1 and 8.12 of this Amended and Restated Lease and Project Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Amended and Restated Lease and Project Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 4.3, 5.1 and 5.4 hereof.

#### Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recapture Benefits, and (D) all other payments due under this Amended and Restated Lease and Project Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Amended and Restated Lease and

Project Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

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

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

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

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

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

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

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

## ARTICLE XI

### EARLY TERMINATION OF AMENDED AND RESTATED LEASE AND PROJECT AGREEMENT OPTION IN FAVOR OF COMPANY

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

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

- (a) To the Agency or the Taxing Authorities, as appropriate pursuant to Section 5.1 hereof: all PILOT Payments due and payable hereunder as of the date of the termination or expiration of this Amended and Restated Lease and Project Agreement;
- (b) To the Agency: the purchase price with respect to the Facility of one dollar (\$1.00);
- (c) To the Agency: all amounts due and payable under Section 5.4 hereof;
- (d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents, including legal fees; and
- (e) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Amended and Restated Lease and Project Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents in form and substance reasonably satisfactory to the Agency (i) to terminate this Amended and Restated Lease and Project Agreement and the Company Lease and

to convey title to the Facility to the Company, subject only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when the Company's leasehold interest was assigned to the Company by the Original Company, (B) any Liens created at the request of the Company or any predecessor in interest, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Amended and Restated Lease and Project Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility. At the closing of any expiration or termination of the Amended and Restated Lease and Project Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause any such releases to be recorded as applicable. Upon the conveyance of the Facility by the Agency to the Company, the Amended and Restated Lease and Project Agreement shall terminate.

## ARTICLE XII

### LENDER PROVISIONS

Section 12.1 Subordination of Amended and Restated Lease and Project Agreement. This Amended and Restated Lease and Project Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Notices to Lenders. Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice to the Company of an Event of Default under this Amended and Restated Lease and Project Agreement (each a "Notice") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender by regular mail at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith.

Section 12.3 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered (i) in the case of the Lender as provided in Section 12.2, or (ii) in the case of Agency or the Company, personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill  
Farmingville, New York 11738  
Attention: Lisa MG Mulligan, Chief Executive Officer

With a copy to:

Brookhaven Attorney's Office  
Town Hall  
1 Independence Hill  
Farmingville, New York 11738  
Attention: Annette Eaderesto, Esq.

To the Company:

AHIP NY Bellport Properties LLC  
c/o American Hotel Income Properties REIT LP  
1660 - 401 West Georgia Street  
Vancouver, BC V6B 5A1 Canada  
Attention: Chief Financial Officer

With a copy to:

Farris, Vaughan, Wills & Murphy  
700 West Georgia Street, 25<sup>th</sup> Floor  
Vancouver, BC V7Y 1K8 Canada  
Attention: Duncan J. Reid

And to:

Snell & Wilmer LLP  
One Arizona Center  
Phoenix, Arizona 85004-2202  
Attention: Joyce K. Wright

To the Lender:

Deutsche Bank AG, New York Branch  
60 Wall Street, 10<sup>th</sup> Floor  
New York, New York 10005  
Attention: Ryan Kenyon and Nick Manolas

And to:

Deutsche Bank AG, New York Branch  
60 Wall Street, 10<sup>th</sup> Floor  
New York, New York 10005  
Attention: General Counsel

With a copy to:

Frost Brown Todd LLC  
400 West Market Street, Suite 3200  
Louisville, Kentucky 40202  
Attention: John W. Gragg, Esq.

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

Section 13.2 Binding Effect. This Amended and Restated Lease and Project Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 13.3 Severability. In the event any provision of this Amended and Restated Lease and Project Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.4 Amendments, Changes and Modifications. This Amended and Restated Lease and Project Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

Section 13.5 Execution of Counterparts. This Amended and Restated Lease and Project 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 13.6 Applicable Law. This Amended and Restated Lease and Project Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Amended and Restated Lease and Project Agreement shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk, and the Company consents to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Amended and Restated Lease and Project Agreement.

Section 13.7 Reserved.

Section 13.8 Survival of Obligations. This Amended and Restated Lease and Project Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Amended and Restated Lease and Project Agreement.

Section 13.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Amended and Restated Lease and Project 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 Amended and Restated Lease and Project Agreement.

Section 13.10 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 Amended and Restated Lease and Project Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Amended and Restated Lease and Project Agreement.

Section 13.11 No Liability.

(a) Neither the Agency, nor any member, officer, agent, servant or employee of the Agency, nor a successor in interest to any of the foregoing, shall be under any personal liability with respect to any of the provisions of this Amended and Restated Lease and Project Agreement or any other Company Document or any matter arising out of or in connection with this Amended and Restated Lease and Project Agreement, or any other Company Document, or the Company's or any other person's occupancy or use of the Facility, and in the event of any breach or default with respect to the Agency's obligations under this Amended and Restated Lease and Project Agreement or any claim arising out of or in connection with this Amended and Restated Lease and Project Agreement or the Company's or any other person's occupancy or use of the Facility, the Company's sole remedy shall be an action or proceeding to enforce such obligation, or for specific performance, injunction or declaratory judgment, and the Company hereby waives any right to recover from, and releases, the Agency, its members, officers, agents and employees from any and all monetary damages, whether known, unknown, foreseeable, unforeseeable, ordinary, extraordinary, compensatory or punitive, and in no event shall the Company attempt to secure any personal judgment against the Agency or any of the Agency's members, officers, agents or employees, or successors thereto.

(b) The approval, consent, determination, opinion or judgment of the Agency or any agent or employee of the Agency shall not be construed as such person's endorsement, warranty or guarantee of the matter at issue or the manner or means of accomplishing same or the benefit thereof; in no event shall actions of such party replace, or act as or on behalf of, the requesting parties, its agents, servants or employees.

Section 13.12 Recordation. This Amended and Restated Lease and Project Agreement shall not be recorded by either party hereto. The Agency, at the sole expense and effort of the Company, shall cause a memorandum of lease with respect hereto to be recorded in the office of the Suffolk County Clerk.

[Remainder of Page Intentionally Left Blank - Signature Pages Follow]



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

**TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 20<sup>th</sup> day of June in the year 2017, before me, the undersigned, personally appeared **LISA MG MULLIGAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that <sup>she</sup> he executed the same in <sup>her</sup> his capacity, and that by <sup>her</sup> his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

*Theresa M. Alkon*  
Notary Public

**THERESA M. ALKON**  
Notary Public - State of New York  
No. 01AL6351399  
Qualified in Suffolk County  
My Comm. Expires Dec. 5, 2020



Real property in the Village of Bellport, County of Suffolk, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING AT BELLPORT, IN THE TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK AND STATE OF NEW YORK, KNOWN AND DESIGNATED AS PART OF LOT 3 ON THE MAP OF BROOKHAVEN INDUSTRIAL PART SECTION 1, FILED JULY 2, 2002, AS FILE NUMBER 10790, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE PROPOSED SOUTHERLY SIDE OF HORSE BLOCK ROAD (C.R. 16) WITH THE NORTHWESTERLY SIDE OF SAWGRASS DRIVE;

RUNNING THENCE SOUTH 07° 03' 49" EAST, 14.14 FEET;

THENCE SOUTH 52° 03' 49" EAST, 10.00 FEET;

THENCE ALONG THE ARC OF A CURVE BEARING TO THE RIGHT HAVING A RADIUS OF 22.00 FEET, A LENGTH OF 3.20 FEET;

THENCE SOUTH 37° 56' 11" WEST, 340.39 FEET;

THENCE NORTH 52° 03' 49" WEST, 372.64 FEET;

THENCE NORTH 05° 28' 14" WEST, 192.65 FEET;

THENCE NORTH 52° 03' 49" WEST 399.07 FEET;

THENCE NORTH 05° 10' 29" WEST, 115.89 FEET;

THENCE SOUTH 52° 03' 49" EAST, 439.54 FEET;

THENCE SOUTH 05° 28' 14" EAST, 49.24 FEET;

THENCE NORTH 84° 41' 11" EAST, 105.87 FEET;

THENCE NORTH 05° 18' 49" WEST 126.66 FEET TO THE SOUTHERLY SIDE OF HORSEBLOCK ROAD (C. R. 16);

THENCE ALONG THE SIDE OF SAID ROAD, SOUTH 52° 03' 49" EAST, 499.36 FEET TO THE POINT OR PLACE OF BEGINNING.

EXHIBIT B

RESERVED

EXHIBIT C

PILOT Schedule

Formula for In-Lieu-of-Taxes Payment: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Suffolk County, South Country Central School District and Appropriate Special Districts

Definitions

X = assessment based on the land and those improvements existing as of December 1, 2008.

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility.

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

<u>Tax Year Commencing</u>	<u>Payment</u>
December 1, 2011	100% normal tax on X and 0% normal tax on Y
December 1, 2012	100% normal tax on X and 0% normal tax on Y
December 1, 2013	100% normal tax on X and 0% normal tax on Y
December 1, 2014	100% normal tax on X and 0% normal tax on Y
December 1, 2015	100% normal tax on X and 0% normal tax on Y
December 1, 2016	100% normal tax on X and 0% normal tax on Y
December 1, 2017	100% normal tax on X and 0% normal tax on Y
December 1, 2018	100% normal tax on X and 0% normal tax on Y
December 1, 2019	100% normal tax on X and 0% normal tax on Y
December 1, 2020	100% normal tax on X and 0% normal tax on Y
December 1, 2021 and thereafter	100% normal tax on X and 100% normal tax on Y

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied or imposed as payments in lieu thereof under applicable law (or would be levied or imposed as payments in lieu thereof under applicable law if the Facility were owned by the Company exclusive of the Agency's interest therein) against or with respect to the Facility for special improvements or special district improvement

## EXHIBIT G

### CONSTRUCTION WAGE POLICY

#### Compliance with Labor Law, Executive Law and Civil Rights Law

The purpose of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in Suffolk County.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in straight-lease transactions with the Agency.

Now therefor, the parties to the attached Amended and Restated Lease and Project Agreement (the “**Agreement**”) further agree to be bound by the following, which are hereby made a part of the Agreement.

- I. The Company agrees that:
  - (a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in compliance with the Labor Law; and
  - (b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law of the State of New York (the “**Labor Law**”), including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to encourage the Company to voluntarily comply with such provisions.
- II. To the extent required by law, the Company agrees that each contract or subcontract for the construction and equipping of the Facility shall provide:
  - (a) in the hiring of employees for the performance of work in acquiring, demolishing, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

- (b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, construction and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing and equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and
- (c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will provide access, as required by law, to its books, records and accounts to the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 47 of the Laws of 1974 of the State, as amended.

“Agency” means (i) the Town of Brookhaven Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Compliance Agreement” means an agreement in the form and substance satisfactory to the Agency between the Agency and a sublessee or manager of all or any part of the Facility, pertaining to, inter alia, the obligations to the Agency of the sublessee or manager with respect to the Facility.

“Agency Documents” means the Assignment and Assumption Agreement and Consent, the Amended and Restated Lease and Project Agreement, the Sublessee Agency Compliance Agreement and the Manager Agency Compliance Agreement.

“Amended and Restated Lease and Project Agreement” means the Amended and Restated Lease and Project Agreement, dated as of June 22, 2017 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Chief Executive Officer or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; in the case of the Company, any Manager and such additional persons as, at the time, are designated to act on behalf of the Company; and, in the case of the Sublessee, any Manager and such additional persons as, at the time, are designated to act on behalf of the Sublessee.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York, or any city in which the principal office of the Lender, if any, is located are authorized by law or executive order to remain closed.

“Closing Date” means June 22, 2017.

“Company Documents” means the Assignment and Assumption Agreement and Consent, the Amended and Restated Lease and Project Agreement, the Sublease, and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith or supplemental thereto to which the Company is party or by which it is bound.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.



“Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.).

“Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

“Environmental Reports” means the environmental reports identified as Phase I Environmental Site Assessment, dated May 15, 2017, prepared by Partners Assessment Corporation.

“Event of Default” means (a) when used with respect to the Amended and Restated Lease and Project Agreement, any of the events defined as Events of Default by Section 10.1 of the Amended and Restated Lease and Project Agreement, and (b) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

“FTE” shall have the meaning set forth in Section 8.12 of the Amended and Restated Lease and Project Agreement.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“Improvements” means all those buildings, improvements, structures and other related facilities affixed or attached to the Land all as they may exist from time to time.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company, the Sublessee or the Manager.

“Land” means the real property leased by the Agency to the Company pursuant to the Amended and Restated Lease and Project Agreement and more particularly described in Exhibit A attached thereto.

“Lease Term” means the duration of the leasehold estate created by the Amended and Restated Lease and Project Agreement as specified in Section 4.2 of the Amended and Restated Lease and Project Agreement.

“Lender” means Deutsche Bank AG, New York Branch, and any lender making a Loan to the Company to finance in whole or in part, the acquisition, operation and/or development of the Facility or any portion thereof.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means any loan made by a Lender to the Company to pay for the costs of the acquisition of the Facility, or any portion thereof, which Loan is secured by a Mortgage on the Facility.

“Loan Documents” means any documents, agreements and instruments evidencing, securing or delivered to a Lender in connection with a Loan, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Manager Documents” means the Management Agreement, the Manager Agency Compliance Agreement, and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith or supplemental thereto to which the Manager is party or by which it is bound.

“Manager Agency Compliance Agreement” means that certain Agency Compliance Agreement, dated as of June 22, 2017, by and between the Agency and the Manager.

“Mortgage” means any mortgage and security agreement, including, without limitation, any mortgage consolidation agreement, granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender’s Loan to the Company.

“Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

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

“Organizational Documents” means (i) in the case of an entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such entity, (ii) in the case of an entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such entity, and (iii) in the case of an entity constituting a general or limited partnership, the partnership agreement of such entity.

“Permitted Encumbrances” means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, (ii) the Amended and Restated Lease and Project Agreement, (iii) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (iv) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (v) Liens for taxes not yet delinquent, (vi) any Mortgage granted to a Lender, (vii) purchase money security interests and blanket liens and (viii) the Sublease Agreement.

“Person” or “Persons” means an individual, partnership, limited liability partnership, limited liability company, corporation, trust or unincorporated organization, or a government agency, political subdivision or branch thereof.

“PILOT Payments” has the meaning ascribed to such term in Section 5.1 of the Amended and Restated Lease and Project Agreement.

“Project Application Information” means the application and questionnaire submitted to the Agency, by or on behalf of the Company and/or the Sublessee and/or the Manager, for approval by the Agency of the sale of the Facility, together with all other letters, documentation, reports and financial information submitted in connection therewith.

“Prime Rate” means (i) if no Lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a Lender exists, the rate designated by the Lender from time to time as its “prime rate”.

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

“Public Purposes” shall mean the State’s objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Real Property Tax Abatements” has the meaning ascribed to such term in Section 5.4 of the Amended and Restated Lease and Project Agreement.

“Recaptured Benefits” has the meaning ascribed to such term in Section 5.4 of the Amended and Restated Lease and Project Agreement.

“Recapture Event” has the meaning ascribed to such term in Section 5.4 of the Amended and Restated Lease and Project Agreement.

“Release” has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

“Schedule of Definitions” means the words and terms set forth in this Schedule of Definitions attached to the Amended and Restated Lease and Project Agreement, as the same may be amended from time to time.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“State” means the State of New York.

“Sublessee Agency Compliance Agreement” means that certain Agency Compliance Agreement, dated the Closing Date, by and between the Agency and the Sublessee.

“Sublease Agreement” or “Sublease” means a certain Sublease, dated as of June 22, 2017, by and between the Company, as sublessor, and the Sublessee, as sublessee.

“Sublessee Documents” means the Sublease, the Sublessee Agency Compliance Agreement, and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith or supplemental thereto to which the Sublessee is party or by which it is bound.

“Tax Year” shall mean each period commencing December 1 and ending the following November 30.

“Taxes on the Facility” has the meaning ascribed to such term in Section 5.1 of the Amended and Restated Lease and Project Agreement.

“Taxing Authorities” has the meaning ascribed to such term in Section 5.1 of the Amended and Restated Lease and Project Agreement.

“Title Report” means Certificate of Title No. NCS-846273NY1-PHX1 issued by First American Title Insurance Company having an effective date of March 17, 2017, amended July 5, 2017.

“Transaction Counsel” means the law firm of Weinberg, Gross & Pergament LLP.

“Transaction Documents” means the Agency Documents, the Company Documents, the Sublessee Documents and the Manager Documents.

Except as otherwise expressly provided or unless the context otherwise requires, (i) the plural includes the singular, the singular includes the plural, and the use of any gender herein shall be deemed to include the other genders; (ii) “including,” “included” and words of similar import are deemed followed by “but not limited to”; (iv) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to the document as a whole and not to any particular provision, (v) the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of the document, (vi) “or” is not exclusive, (vii) “any” shall include “any and all”, and (viii) “shall” is mandatory, “will” shall have the same meaning as “shall” and “may” is permissive.