

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(Brookhaven, New York)

and

JONES VENTURES, LLC

**LEASE AND PROJECT AGREEMENT**

Town of Brookhaven Industrial Development Agency

(Jones Ventures, LLC / UI Supplies, Inc. Facility)

Dated as of November 1, 2016

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LEASE AND PROJECT AGREEMENT, dated as of November 1, 2016, by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York, maintaining an office at 1 Independence Hill, Farmingville, New York 11738 (the “Agency”), and JONES VENTURES, LLC, a limited liability company duly organized and existing under the laws of the State of New York, maintaining a place of business at 723 Broadway Avenue, Holbrook, New York 11741 (the “Company”).

## RECITALS

WHEREAS, the Town of Brookhaven Industrial Development Agency was created by Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York (collectively, the “Act”), with the authority and power to, among other things, acquire, construct and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Company, the Sublessee (as defined herein) and others have submitted to the Agency a proposal for the Agency (a) to assist with (i) the acquisition of an approximately 1.29 acre parcel of land located at 22 Old Dock Road, Yaphank, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-740.00-01.00-005.022) (the “Land”), and the acquisition and renovation of the approximately 15,700 square foot building located thereon (the “Improvements”), and the acquisition and installation therein of certain equipment not part of the Equipment (as defined herein) (the “Facility Equipment”; together with the Land and Improvements, the “Company Facility”), which Company Facility is to be leased by the Agency to the Company and further subleased by the Company, as to approximately 10,700 square feet, to the Sublessee, as to approximately 3,200 square feet, to an unrelated third party upon written approval of the Agency of the proposed occupant and the proposed terms and conditions of the occupancy, and as to approximately 1,600 square feet, to an existing tenant, MICHAEL ZETTERHOLM d/b/a MIKE’S POOL SERVICE under a certain existing lease agreement, and (ii) the acquisition and installation therein of certain equipment and personal property (the “Equipment”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “Facility”), which Facility is to be used by the Sublessee for the Permitted Use (as defined herein), and which Company Facility is to be used by an unrelated third party for purposes approved by the Agency, and by MICHAEL ZETTERHOLM d/b/a MIKE’S POOL SERVICE, for the operation and maintenance of pools, and (b) to grant mortgage liens thereon and security interests therein, and (c) to provide financial assistance within the meaning of the Act; and

WHEREAS, on October 19, 2006, the Agency adopted its authorizing resolution, by which, among other matters, the Agency determined that the action relating to the acquisition, construction, renovation, equipping, operation, leasing and subleasing of the Facility is an “unlisted” action, as that term is defined in the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and will not have a “significant effect” on the environment and, therefore, an environmental impact statement will not be prepared, such determination constituting a

negative declaration for purposes of said law, determined to proceed under the provisions of the Act to acquire, construct, install, equip, repair, and maintain the Facility, lease the Company Facility from the Company and sublease the Company Facility to the Company, and lease the Equipment to the Sublessee, and to provide “financial assistance” within the meaning of the Act to the Company and Sublessee, including straight leases, and exemptions from taxation in accordance with Section 874 of the Act; and

WHEREAS, a public hearing (the “**Hearing**”) was held on October 19, 2016, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

WHEREAS, the acquisition, renovation, and equipping of the Company Facility, the leasing of the Facility by the Agency, subleasing of the Company Facility to the Company, the acquisition and installation of the Equipment, the leasing of the Equipment by the Agency to the Sublessee, the providing of financial assistance to the Company and the Sublessee within the meaning of the Act, and the granting of mortgages on, and security interests in, the Facility, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

WHEREAS, the Agency has approved the location of the site of the Facility; and

WHEREAS, the Facility shall constitute an industrial development facility within the meaning of the Act; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to acquire, renovate and equip the Company Facility in accordance with the Application (as defined herein) and the Plans and Specifications (as defined herein) as approved by the Agency and the Bank (as hereinafter defined); and

WHEREAS, the Sublessee has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to acquire and install the Equipment in accordance with the Application (as defined herein);

WHEREAS, the Agency intends to lease the Company Facility to the Company, and the Company desires to rent and acquire the Company Facility from the Agency, upon the terms and conditions hereinafter set forth in this Lease Agreement (as defined herein), and to lease the Equipment to the Sublessee, and the Sublessee desires to lease and acquire the Equipment from the Agency, upon the terms and conditions hereinafter set forth in the Equipment Lease Agreement (as defined herein); and

WHEREAS, immediately prior to the execution and delivery of this Lease Agreement, (a) the Company has or will execute and deliver or cause to be executed and delivered to the Agency (i) a certain Company Lease Agreement (as herein defined) between the Company and the Agency, which conveys to the Agency a leasehold interest in the Land and Improvements, and (ii) a bill of sale dated the Closing Date (as defined herein) (the “**Company**

**Facility Equipment Bill of Sale**”), which conveys to the Agency all right, title and interest of the Company in and to the Facility Equipment; and (b) the Sublessee has or will execute and deliver or cause to be executed and delivered to the Agency (i) a bill of sale dated the Closing Date (the “**Equipment Bill of Sale**”), which conveys to the Agency all right, title and interest of the Sublessee in and to the Equipment, and (ii) a certain Equipment Lease Agreement between the Agency and Sublessee, under which the Agency leases to the Sublessee the Equipment; and

WHEREAS, in order to finance a portion of the costs of the Project, the Bank (as herein defined), has made a loan to the Company, which loan is evidenced by the Note (as herein defined) made by the Company to the Bank; and

WHEREAS, in order to secure the obligations of the Company to the Bank under the Note, the Company and the Agency have executed and delivered the Mortgage, which Mortgage the Agency have executed for the sole purpose of subjecting to the lien thereof its interest in the Company Facility, and pursuant to which Mortgage the Company and the Agency grant to the Bank a mortgage lien on the Company Facility;

WHEREAS, as an inducement to the Agency to enter into this Lease Agreement and the transactions contemplated hereby, the Company, the Sublessee and/or others will (a) pay or cause to be paid the PILOT Payments (as defined herein), and the Recaptured Benefits (as defined herein) upon the occurrence or failure to occur of certain events, and (b) enter into with the Agency a certain Agency Compliance and Guaranty Agreement (as defined herein) from the Company, Sublessee and certain guarantors of even date herewith providing for, among other matters, assuring the Company’s and the Sublessee’s compliance with their respective obligations to the Agency.

## AGREEMENT

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

### ARTICLE I DEFINITIONS AND INTERPRETATIONS

The following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

“**Act**” means Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended from time to time, together with Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time.

“**Agency**” means the (i) Town of Brookhaven Industrial Development Agency and its successors and assigns, and (ii) a public benefit corporation or political subdivision resulting from or surviving any consolidation or merger to which the Agency or its successors may be a part.

**“Agency Compliance Agreement”** means an agreement in form and substance satisfactory to the Agency, between the Agency and sublessee, occupant, or user of the Facility, pertaining to the sublessee’s, occupant’s or user’s compliance with the Agency’s requirements and containing such other provisions as the Agency may require.

**“Agency Compliance and Guaranty Agreement”** means that certain Agency Compliance and Guaranty Agreement, dated as of November 1, 2016, among the Agency and the Company, the Sublessee, Uninet Imaging, Inc., Nestor Saporiti and Joseph Dovi.

**“Agency Counsel”** means the law firm of Weinberg, Gross & Pergament LLP, or another attorney or firm of attorneys selected by the Agency from time to time.

**“Agency Documents”** shall have the meaning ascribed thereto at Section 2.1 hereof.

**“Agency Fee”** means the fees of the Agency, as prescribed from time to time by the Agency, to be paid by the Company, the Sublessee or Guarantor (as defined herein) based upon the costs and expenses of the acquisition, demolition, renovations, construction and equipping of the Facility or the administrative regulatory efforts and responsibilities. In addition, the Agency Fee shall include an annual administrative fee (the **“Administrative Fee”**) in such amounts as may be prescribed and determined by the Agency from time to time on account of administering this Lease Agreement; such amounts shall be in addition to, and not in limitation of, such interest, penalties, expenses and other charges as may be prescribed or provided pursuant to this Lease Agreement or otherwise, or applicable by reason of or in connection with the failure of the Company to comply with this Lease Agreement in any respect.

**“Application”** means that certain application of the Company and/or others to the Agency for financial assistance in connection with the Facility, dated August 12, 2016, as amended and supplemented.

**“Assignment of Rents and Leases”** means the Assignment of Rents and Leases, dated November 7, 2016, executed and delivered by the Company to the Bank, assigning, conveying and transferring to the Bank rights in and to certain leases and rents thereunder as security for the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute assignments of rents and leases thereafter executed and delivered by the Company, creating, modifying, extending or supplementing any assignment of rents or leases on or with respect to the Facility or any portion thereof.

**“Authorized Representative”** means, in the case of the Agency, the Chairman, Vice Chairman, any Member of the Board of the Agency, or the Chief Executive Officer; in the case of the Company, any member; in the case of the Sublessee, its president; and in the case of any of the Agency, the Company, or the Sublessee, such additional persons as, at the time, are designated to act on behalf of the Agency, the Company, or the Sublessee, as the case may be, by written certificate furnished to the other and to the Bank, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman or the Chief Executive



Officer, (ii) the Company by any member or manager, or (iii) the Sublessee by the President or other officer or any member or manager, as the case may be.

“**Bank**” shall mean, collectively and severally, (i) Citibank, N.A., 6801 Colwell Blvd., Mail Stop NTSB 2400, Irving, Texas 75039, (ii) any of the successors or assigns of the foregoing, or (iii) any surviving, resulting or transferee banking association or corporation authorized to do business in the State; however, each of the foregoing shall be a “Bank” only during such period that the Person shall hold a mortgage lien on, or a security interest in, the Facility or any portion thereof.

“**Closing Date**” means the date of the execution and delivery of this Lease Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed regulations of the Department of the Treasury promulgated thereunder.

“**Company**” means Jones Ventures, LLC, a limited liability company duly organized and existing under the laws of the State of New York and its successors and assigns.

“**Company Facility Equipment Bill of Sale**” shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement.

“**Company Documents**” shall have the meaning ascribed thereto at Section 2.2 hereof.

“**Company Facility**” shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement.

“**Company Lease Agreement**” means that certain Company Lease Agreement, dated as of November 1, 2016, by and between the Company, as lessor, and the Agency, as lessee, as same may be amended from time to time.

“**Company Member**” means collectively or individually Nestor Saporiti or Joseph Dovi, each a member of the Company.

“**Company Sales Tax Savings**” shall mean all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent (as defined in Section 5.2), pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Company Facility.

“**Completion Date**” means, as to the Facility, the date of completion of the acquisition, construction and equipping of the Facility, as certified to pursuant to Section 3.6 of this Lease Agreement.

**“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.

**“Construction Period”** means, with respect to the Company Facility, the period (i) beginning on the earlier of the date of commencement of acquisition, renovation, and equipping of the Company Facility, or the Closing Date with respect to this Lease Agreement, and (ii) ending on the Completion Date with respect to the Company Facility.

**“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.).

**“Eligible Items”** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company, the Sublessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

(i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;

(ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;

(iii) with respect to the eligible items identified in (ii) above, purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;

(iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

**“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 Audit”** means the Phase I Environmental Audit, dated September 13, 2016, by AEI Consultants, with respect to the Facility, delivered by the Company to the Agency.

**“Environmental Laws”** mean 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”** mean 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.

**“Equipment”** means all machinery, equipment and other personal property acquired by the Sublessee as agent for the Agency, and used and to be used in connection with the Facility, with such additions thereto and substitutions therefor as may exist from time to time in accordance with, and as described in, the Equipment Lease Agreement. “Equipment” shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

**“Equipment Bill of Sale”** shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement.

**“Equipment Completion Date”** means the date of completion of the acquisition and installation of the Equipment in the Company Facility as certified pursuant to Section 3.6 of the Equipment Lease Agreement.

**“Equipment Lease Agreement”** means that certain Equipment Lease and Project Agreement, dated as of November 1, 2016, by and between the Agency and the Sublessee, as the same may be amended from time to time.

**“Expiration Date”** means November 30, 2027.

**“ERISA”** means the Employment Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

**“Facility”** shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement.

**“Facility Equipment”** means all machinery, equipment and other personal property acquired by the Company as agent for the Agency, and used and to be used in connection with the Facility (but excluding the Equipment), with such additions thereto and

substitutions therefor as may exist from time to time in accordance with, and described in, this Lease Agreement. "Facility Equipment" shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) fine art or other similar decorative items, or (v) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

"**Form ST-123**" shall mean NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes with respect to industrial development agency transactions.

"**Form ST-340**" shall mean NYSDTF Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" or such additional or substitute form as is adopted by NYSDTF to report Company Sales Tax Savings or the Sublessee Sales Tax Savings with respect to industrial development agency transactions.

"**Form ST-60**" shall mean NYSDTF Form ST-60 "IDA Appointment of Project Operator or Agent" or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

"**Full-Time Equivalent Employee**" or "**FTE**" shall mean a person employed by the Company or the Sublessee at the Facility on a full time basis (that is, working at least a 35 hour work week at the Facility, subject to customary vacation, holiday and sick leave), or two (2) individuals employed by the Company or Sublessee at the Facility during the same period on a "part time basis" (that is, each of the two (2) individuals working at least 15 hours a week and collectively working at least a 35 work week at the Facility, subject to customary vacation, holiday and sick leave), each of such full-time and part time employees is on the payroll of, receiving customary benefits from, and directly employed by, any of the Company or Sublessee (and excluding any individuals employed by temporary employment or similar agencies) and performs their work at or from the Facility.

"**Guarantor**" mean collectively or individually each Company Member, Uninet Imaging, Inc., and the Sublessee.

"**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, toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), the Federal Waters

Pollution Control Act, as amended (33 U.S.C. Section 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**” shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement.

“**Indebtedness**” means any and all loans, advances, debts and other obligations.

“**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 Bank.

“**Independent Engineer**” means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of the State and not a full time employee of the Agency, or the Company and selected by the Company and acceptable to the Agency and the Bank.

“**Ineligible Items**” shall mean the following items of personal property and services with respect to which the Company, the Sublessee and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) ordinary office supplies such as pencils, paper clips and paper;
- (vi) any materials or substances that are consumed in the operation of machinery;
- (vii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (viii) maintenance of the type as shall constitute janitorial services.

“**Labor Laws**” means Section 220 of the New York Labor Law and any other labor or similar laws of the State of New York.

“**Land**” shall have the meaning ascribed thereto in the recital paragraphs of this Lease Agreement and is more particularly described on Exhibit A attached hereto.

“**Lease Agreement**” means this Lease and Project Agreement, dated as of November 1, 2016, by and between the Agency and the Company, as the same may be amended from time to time.

“**Lease Term**” means the duration of the leasehold estate created in this Lease Agreement as specified in Section 4.3 hereof.

“**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 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 Lease Agreement, 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 Documents**” means, collectively, the Mortgage, the Assignment of Rents and Leases, the Note and other documents executed and delivered to the Bank in connection with the Indebtedness to the Bank.

“**Maximum Company Sales Tax Savings Amount**” shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which aggregate amount shall not exceed in the aggregate \$7,500.00.

“**Maximum Sublessee Sales Tax Savings Amount**” shall mean the aggregate maximum dollar amount of Sublessee Sales Tax Savings that the Sublessee and all Agents acting on behalf the Sublessee are permitted to receive under the Equipment Lease Agreement, which aggregate amount shall not exceed in the aggregate \$10,000.00.

“**Mortgage**” means the Mortgage and Security Agreement, dated November 7, 2016, executed and delivered by the Agency and the Company to the Bank on the Closing Date creating a first Lien on the Company Facility, subject only to Permitted Encumbrances, as security for payment of the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute mortgages and security agreements thereafter executed and delivered by the Agency, at the request of the Company, and/or the Company, creating, modifying, extending or supplementing any Lien or Liens on or with respect to the Company Facility or any portion thereof.

“**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.

“**Note**” means the Note, dated November 7, 2016, executed and delivered by the Company to the Bank, evidencing the indebtedness to the Bank in the amount of \$1,520,000.00, together with interest thereon and other charges and obligations thereunder; “Note” shall also mean any additional, supplemental and substitute note or notes evidencing, individually or collectively, Indebtedness to the Bank.

“**NYSDTF**” shall mean the New York State Department of Taxation and Finance.

“**Permitted Encumbrances**” means (i) the Company Lease Agreement, (ii) this Lease Agreement, and any sublease entered into in accordance with this Lease 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 to the extent permitted by Section 8.9(b) hereof, (v) Liens for taxes at the time not delinquent, (vi) the Recapture Agreement, (vii) the Mortgage, (viii) the Assignment of Rents and Leases, (ix) exceptions to title set forth in the policy of title insurance issued to, and accepted by, the Agency under Section 3.2 hereof, and (x) such other encumbrances to which the Agency expressly consents in writing.

“**Permitted Use**” means the manufacture and distribution of printers and related products, and such other use as may be authorized by the Agency under any Agency Compliance Agreement.

“**Person**” includes natural persons, sole proprietorships, firms, associations, limited liability companies, partnerships (including limited partnerships), joint ventures, trusts, associations, corporations and other legal entities or government (whether Federal, state, county, city, municipal, town, village or otherwise, including any instrumentality, division, agency, body or department thereof).

“**PILOT Payments**” shall have the meaning ascribed thereto in Section 5.1 of this Lease Agreement.

“**Plans and Specifications**” means the plans and specifications for the Facility satisfactory to the Agency and the Bank prepared by an architect and/or engineer and approved by the Company, the Agency and the Bank, as the same may be implemented and detailed from time to time and as the same may be revised from time to time with the approval of the Company, the Agency and the Bank.

“**Prime Rate**” means the rate of interest established from time to time by Bank, or such other lending institution as may be selected by the Agency from time to time, as its “Prime Rate.”

**“Project”** shall mean (a) the acquisition of an approximately 1.29 acre parcel of land located at 22 Old Dock Road, Yaphank, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-740-1-5.022) (the “Land”), and the acquisition and renovation of the approximately 15,700 square foot building located thereon (the “Improvements”), and the acquisition and installation therein of certain equipment not part of the Equipment (as defined herein) (the “Facility Equipment”; together with the Land and Improvements, the “Company Facility”), which Company Facility is to be leased by the Agency to the Company and further subleased by the Company, as to approximately 10,700 square feet, to the Sublessee, as to approximately 3,200 square feet, to an unrelated third party upon written approval of the Agency of the proposed occupant and the proposed terms and conditions of the occupancy, and as to approximately 1,600 square feet, to an existing tenant, MICHAEL ZETTERHOLM d/b/a MIKE’S POOL SERVICE under a certain existing lease agreement, and (b) the acquisition and installation therein of certain equipment and personal property (the “Equipment”), which Equipment is to be leased by the Agency to the Sublessee (the Company Facility and the Equipment are collectively referred to herein as the “Facility”), which Facility is to be used by the Sublessee for the Permitted Use and which Company Facility is to be used by an unrelated third party for purposes approved by the Agency, and by MICHAEL ZETTERHOLM d/b/a MIKE’S POOL SERVICE, for the operation and maintenance of pools.

**“Project Work”** means the work, labor, materials and services to complete the Project.

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

**“Real Property Tax Abatements”** shall have the meaning ascribed thereto in Section 5.4 of this Lease Agreement.

**“Recaptured Benefits”** shall have the meaning ascribed thereto in Section 5.4 of this Lease Agreement.

**“Recapture Event”** shall have the meaning ascribed thereto in Section 5.4 of this Lease Agreement.

**“Release”** has the same meaning as 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.

**“Sales Tax Agent Authorization Letter”** shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2.

**“Sales Tax Exemption”** shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Project.



“**Sales Tax Registry**” shall mean the Sales Tax Registry in the form set forth in Exhibit F.

“**Sales Tax Savings**” shall mean all Sales Tax Exemption savings realized by or for the benefit of the Company or the Sublessee, including any savings realized by any Agent, pursuant to this Lease Agreement, the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Project.

“**Sales and Use Taxes**” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, 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.

“**State Sales and Use Taxes**” shall mean sales and compensating use taxes and fees imposed by Article 28 or 28-A of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

“**State Sales Tax Savings**” shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company and the Sublessee, including any savings realized by any Agent, pursuant to this Lease Agreement, the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“**Sublease**” means that certain sublease agreement, dated October 31, 2016, by and between the Company and the Sublessee pursuant to which approximately 10,700 square feet of the Company Facility is subleased by the Company to the Sublessee.

“**Sublessee**” means UI Supplies, Inc.

“**Sublessee Documents**” means the Equipment Lease Agreement, Equipment Bill of Sale, the Sublease, the Loan Documents, the Agency Compliance and Guaranty 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.

“**Sublessee Sales Tax Savings**” shall mean all Sales Tax Exemption savings realized by or for the benefit of the Sublessee, including any savings realized by any Agent, pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Equipment.

**“Taxes on the Facility”** shall have the meaning ascribed thereto at Section 5.1 of this Lease Agreement.

**“Title Insurance”** or **“Title Policy”** means the title insurance policy referred to in Section 3.2 of this Lease Agreement.

**“Transaction Documents”** means the Agency Documents, the Company Documents, the Sublessee Documents and any documents to which a Guarantor is a party.

**“Zetterholm Sublease”** means that certain lease agreement, dated April 1, 2016, by and between Tyrie Realty LLC, as landlord, and Michael Zetterholm d/b/a Mike’s Pool Service, as tenant, pertaining to approximately 1,600 square feet within the Company Facility, and assigned by the landlord thereunder to the Company .

The word “shall” is mandatory; the word “may” is permissive.

Any reference in this Agreement, by name or number, to a government department, agency, statute, regulation, program, or form, shall include any successor or similar department, agency, statute, regulation, program or form.

Except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Lease Agreement shall include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (ii) references herein to “Sections,” “Exhibits” and “Schedules,” without reference herein to this document, are to designated sections, exhibits and schedules to this Lease Agreement; (iii) “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 this Lease Agreement 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 this Lease Agreement, (vi) “or” is not exclusive, and (vii) “any” shall include “any and all”.

## ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of the 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 under the provisions of the Act and has the power to enter into the transactions contemplated by the Company Lease Agreement, this Lease Agreement, the Equipment Lease Agreement, the Agency Compliance and Guaranty Agreement, the Mortgage, and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith or supplemental thereto to which the Agency is a party or by which it is bound (collectively, the **“Agency Documents”**), and to carry out its obligations hereunder. Based upon the representations of the Company and the Sublessee, the Facility will constitute a “project”, as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute and deliver the Agency Documents.

(b) The Agency will accept from Company a leasehold interest in the Land and Improvements, lease the Company Facility to the Company pursuant to this Lease Agreement, permit the Company Facility to be acquired, renovated and equipped by the Company under this Lease Agreement, lease the Equipment to the Sublessee under the Equipment Lease Agreement, and permit the Equipment to be acquired and installed by the Sublessee under the Equipment Lease Agreement, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and to improve their standard of living.

(c) Neither the execution and delivery of any Agency Documents, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of any Agency Documents will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing.

(d) The Agency has been induced to enter into the Agency Documents by the undertaking of the Company and the Sublessee to locate the Facility in the Town of Brookhaven, Suffolk County, State of New York 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.

(e) On October 19, 2016, following publication of notice of public hearing, the Agency held a public hearing on the transactions contemplated hereby.

(f) By resolution adopted on October 19, 2016, the Agency accepted the Application, approved the undertaking of the Facility, and authorized all parties to proceed with the transactions contemplated hereby; the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a “significant impact” or “significant effect” on the environment within the meaning of the SEQR Act.

(g) By resolution adopted on October 19, 2016, the Agency authorized the execution and delivery of the Agency Documents, and such other instruments as may be necessary or desirable in connection with the transactions contemplated hereby.

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 duly organized and validly existing under the laws of the State and has full legal right, power and authority to execute, deliver and perform the Company Lease Agreement, Company Facility Equipment Bill of Sale, this Lease Agreement, the Sublease, the Agency Compliance and Guaranty Agreement, the Loan Documents, 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 (collectively, the “**Company Documents**”), and by proper company action has been duly authorized to execute, deliver and perform the Company Documents and all other

instruments to which the Company is party or by which it is bound in connection with the transactions contemplated hereby.

(b) The execution and delivery of the Company Documents, or any other instrument to which the Company is party or by which it is bound in connection with the transactions contemplated hereby, the consummation of the transactions contemplated thereby or hereby, or the fulfillment of or compliance with any of the provisions of the Company Documents, or any other instrument to which the Company is party or by which it is bound in connection with the transactions contemplated hereby, will not conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which the Company is bound or will constitute a default under any of the foregoing, or constitute a violation of the articles of organization or operating agreement of the Company, or constitute a violation of any law or ordinance or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company other than the Lien created by the Mortgage or Permitted Encumbrances.

(c) The Company Documents and all other instruments to which the Company is party or by which it is bound in connection with the transactions contemplated hereby, constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(d) There is no action or proceeding pending or, to the Company's knowledge, threatened by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Lease Agreement, or any other instrument to which the Company is party or by which it is bound in connection with the transactions contemplated hereby, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company in connection with the execution and delivery of this Lease Agreement and each other instrument to which it is a party or by which it is bound in connection with the transactions contemplated hereby or in connection with the performance of the obligations of the Company hereunder and thereunder have been obtained.

(e) The sole members of the Company are Nestor Saporiti and Joseph Dovi and the sole shareholder of the Sublessee is Nestor Saporiti.

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

(g) The Application 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 Application 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.

(h) The acquisition, renovation and equipping of the Company Facility, the leasing of the Company Facility to the Agency, the subleasing of the Company Facility by the Agency to the Company, the acquisition and installation of the Equipment, and the leasing of the Equipment by the Agency to the Sublessee, and the providing by the Agency of financial assistance and assistance with the financing of the Facility will induce the Company and the Sublessee to locate the Facility in the Town of Brookhaven, Suffolk County, thereby increasing employment opportunities and promoting the welfare of the inhabitants, will not result in the removal of any facility or plant of the Company, the Sublessee or any other occupant or user of the Company Facility from one area of the State (but outside of the Town of Brookhaven) to within the Town of Brookhaven, or in the abandonment of one or more facilities or plants of the Company, the Sublessee, or any other occupant or user of the Company Facility located within the State (but outside of the Town of Brookhaven), except as reasonably necessary to discourage the Company, the Sublessee, or any other occupant or user of the Company Facility from removing such other facility or plant to a location outside the State or to preserve the competitive position of the Company, the Sublessee, or any other occupant or user of the Company Facility. The Company shall take any actions reasonably deemed necessary by the Agency in order to ensure compliance with this Section 2.2(h) and Section 9.3 of this Lease Agreement. 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.

(i) 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 would cause the Facility not to constitute a “project” as such quoted term is defined in the Act.

(j) The total cost of the Facility is not, and shall not be, less than \$2,000,000.00 or more than \$2,500,000.00.

(k) The Facility, the Project Work, and the design and operation of the Facility, conforms and will conform with all, and will not result in the violation of any, applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility, laws and planning regulations of the Town of Brookhaven, or regional and local use plans for the area in which the Facility is located.

(l) Under penalty of perjury, the Company certifies that it is, and, at all times during the Lease Term, shall be, in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

(m) The Facility shall not be used for retail sales (“retail sales” shall include the meaning ascribed thereto in New York General Municipal Law §875).

(n) The Company, as tenant, Sublessee, as sublessee, and Michael Zetterholm under the Zetterholm Sublease will be the sole occupants and users of all portions of the Facility.

(o) A true and complete original counterpart of the Sublease and the Zetterholm Sublease has been delivered to the Agency, and the Sublease and the Zetterholm Sublease shall not be terminated, modified or amended without the written consent of the Agency.

(p) The Company acknowledges and agrees that the Facility and the interest therein to be conveyed by the Lease 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 interests therein are securing the financial obligations of the Company, and that the Facility and the leasehold interest therein have been, or may be, pledged to secure the Indebtedness of the Company to the Bank. The Facility and the interests therein secure the Company's obligations to the Agency under the Company Documents, and all other instruments to which the Company is party or by which it is bound in connections with the transactions contemplated hereby, including the Company's obligation to acquire and maintain the Facility, complete the Project Work on behalf of the Agency, and indemnify and hold harmless the Agency.

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

(r) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, other than such substances that occur naturally.

(s) There are no, and there have not been, any underground storage tanks located on, in or under the Facility.

(t) There has been no Release or 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 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 government 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.

(u) All Environmental Permits necessary for the acquisition, construction, renovation, equipping, ownership, use or operation of the Facility have been obtained or shall be timely obtained, as the case may be, and are, or shall timely be and remain, in full force and effect.

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

(w) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state, or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the condition of the Facility or any containment, clean up, investigations, studies, removal or

remedial action in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(x) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) environmental conditions at, on or in the vicinity of the property, (ii) a violation or alleged violation of any applicable Environmental Law or noncompliance or alleged noncompliance with any Environmental Permit, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the acquisition, construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance thereof.

(y) The Environmental Audit is true, accurate and complete in all respects, and no other report or discussion with respect to the Facility has been prepared by or for any of the Company, the Sublessee or the Guarantors, or which is within the control or possession of the Company, the Sublessee or any of the Guarantors, with respect to the environmental circumstances and conditions at, below and about the Facility.

(z) No representation or warranty by or on behalf of the Company herein nor any statement, certificate or application (including the Application) furnished or to be furnished by or on behalf of the Company to the Agency in connection herewith or in connection with the transactions contemplated hereby, contain nor will contain any untrue statement of a material fact nor will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

### ARTICLE III FACILITY SITE, PROJECT WORK AND FINANCING

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) a leasehold interest in Land, including any buildings, structures or improvements thereon, and (ii) full title to the Facility Equipment, in each instance, free and clear of all claims, charges, liens, encumbrances, security interests and servitudes other than Permitted Encumbrances. Leasehold title to such real property and full title to such personal property and any interests therein, including such interests in real and personal property as may subsequently be conveyed to the Agency as part of the Facility, shall be good and marketable, shall include all substitutions, additions, and replacements thereto as contemplated hereby, and shall vest in the Agency immediately upon delivery to or installation or incorporation into the Company Facility. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out of a defect in title or a Lien adversely affecting the Facility and shall pay all expenses incurred by the Agency in defending any action respecting title to or a Lien affecting the Facility.

Section 3.2 Title Insurance. The Company has obtained or will obtain as and when required by the Agency leasehold title insurance for the benefit of the Agency, in form, substance and amount satisfactory to the Agency, insuring the Agency's leasehold title thereto, with such exceptions therein as may be acceptable to the Agency.

Section 3.3 Subordination of Lease Agreement.

(a) The encumbrance created by this Lease Agreement shall in all respects be subject and subordinate to the lien of the Mortgage.

(b) Any and all subleases created under this Lease Agreement shall in all respects be subject and subordinate to the lien of the Mortgage.

Section 3.4 Acquisition, Renovation and Equipping of the Facility.

(a) The Company shall, on or before October 31, 2017, at the Company's sole cost, expense and effort, on behalf of and for the benefit of the Agency, but without reimbursement from the Agency, promptly, diligently and expeditiously acquire, renovate, install, and equip in accordance with the Plans and Specifications, and pay all costs and expenses for, the Company Facility in accordance with this Lease Agreement.

(b) The Company, with the approval of the Agency and the Bank, may revise the Plans and Specifications from time to time, provided that the Facility shall retain its overall configuration and intended purposes, and shall remain a "project" as defined in the Act.

(c) Except as set forth in Section 6.2 hereto, title to all materials, equipment, machinery and other items of Property intended to be incorporated or installed in the Company Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Company Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to all such materials, equipment, machinery and other items of Property in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, to (i) acquire, renovate and equip the Company Facility in accordance with this Lease Agreement, including the Plans and Specifications, on behalf of the Agency (but at sole cost and expense of the Company), (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to the provisions of this Lease Agreement, including Section 5.2 hereof), and in general doing all things which may be requisite or proper, all for the purposes of acquiring, renovating and equipping the Company Facility with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) pay all fees, costs and expenses incurred in the renovation of the Improvements and the acquisition and installation of the Facility Equipment from funds made available by the Company (but not by the Agency), including from proceeds of the Note, in accordance with this Lease Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable the Agency under the terms of any contract, order, receipt, or writing in connection with construction and completion of the Company Facility and the



acquisition and installation of the Facility Equipment and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtaining in connection with the Company Facility. This agency appointment expressly excludes the Company from purchasing or leasing motor vehicles, including cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles, for use on public highways or streets. Without limiting the generality of the Company's obligations under any Company Documents, the Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents (other than the Company and the Sublessee), anyone under the direction and control of any of them and anyone for whose acts or omissions the Agency or any of them may be liable, from and against any and all claims, demands, actions, suits, litigation, proceedings, damages, losses, liabilities, obligations, penalties, fines, defenses, judgments, costs, disbursements or expenses (including reasonable attorneys' and experts' fees, expenses and disbursements, and attorneys fees incurred to enforce the terms, conditions and provisions of this agreement) of whatever kind or nature arising, directly or indirectly, out of, any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility.

(e) The Agency may enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 3.4.

(f) The Company shall obtain or cause to be obtained, and pay for, all necessary approvals, permits, certificates, authorizations and licenses from appropriate authorities, authorizing the acquisition, renovation, equipping, operation and use of the Company Facility for the purposes contemplated by this Lease Agreement, and shall furnish copies of same to the Agency promptly upon receipt thereof, including satisfactory proof of payment therefor, all of which will be done in compliance in all respects with all applicable laws, and with the conditions and requirements of all policies of insurance required to be maintained hereunder with respect to the Company Facility.

(g) The Company, as agent for the Agency, shall comply with all provisions of the Labor Laws, the Executive Law of the State and the Civil Rights Law of the State applicable to the acquisition, renovation, and equipping of the Company Facility. The Company shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The Company shall, and shall cause the Sublessee to, comply with the relevant policies of the Agency with respect to such laws, which are set forth as Exhibit C. Except as provided in the preceding sentences of this paragraph, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Grant of Mortgage and Other Security. So as to provide funds for payment of costs and expenses of acquiring, renovating and equipping the Company Facility, together with other payments and incidental expenses in connection therewith, at the request of the Company, the Agency may grant from time to time to the Bank a mortgage lien or mortgage liens and security interest or interests, in form and substance satisfactory to the Agency, on or in the Facility or a part thereof in favor of the Bank as security for the obligations of the Company or the Sublessee, including the Note, arising out of the acquisition, renovation and equipping of

the Company Facility by the Company or the acquisition and installation of the Equipment by the Sublessee, provided that such mortgage or mortgages and other security devices shall be without recourse to the Agency, its members, directors, officers, employees and agents who shall have no personal liability thereunder, nor in their capacity as officers, directors, members, employees and agents and shall otherwise be upon such terms, conditions and provisions as shall be acceptable to the Agency. The Company, throughout the Lease Term, shall, at its sole cost and expense, promptly comply with the Mortgage and the Assignment of Rents and Leases and, without limiting the generality of the Company's obligations under this Lease Agreement, defend, indemnify and hold harmless the Agency, and its members, officers, agents (other than the Company or the Sublessee, or any person appointed by the Agency as the Agency's agent under this Lease Agreement) and employees from and against any claim, action, damage, liability or expense, including attorneys' fees, arising in connection with, or resulting from any failure of the Company to promptly comply with the Mortgage or the Assignment of Rents and Leases. Nothing herein contained shall be construed (i) to condition any of the Company's obligations under this Lease Agreement upon obtaining financing for the Company Facility or any part thereof, (ii) to constitute a representation by the Agency that financing for the Company Facility is or shall become available, or (iii) to obligate the Agency to provide any funds for the Company Facility or reimburse the Company or any other person for any costs or expenses of the Company Facility whether or not the proceeds of any financing are sufficient.

Section 3.6 Certificates of Completion. The Company shall furnish the Agency with evidence of completion of the Company Facility, including (i) a certificate signed by an Authorized Representative stating that acquisition, renovation and equipping of the Company Facility has been completed in accordance with the Plans and Specifications therefor, and stating that the payment of all labor, services, materials and supplies used in such acquisition, renovation and equipping has been made or provided for; (ii) such certificates, permits and licenses required for the Company Facility as may be satisfactory to the Agency and the Bank, including a final certificate of occupancy; and (iii) such documents or certificates as may be required by the Agency or the Bank.

Section 3.7 Remedies to be Pursued Against Contractors and Subcontractors and Their Sureties. In the event of a default by any contractor or other Person or subcontractor under any contract made by it in connection with the Company Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other Person so in default and against such surety for the performance of such contract. The Company, in its own name or, if necessary, in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, shall cooperate fully with the Company and take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding provided that the Agency, its members, officers, directors, employees and agents shall not thereby be subjected to risk of loss, liability or expense.

ARTICLE IV  
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 4.1 Demise of Facility. The Agency hereby demises and leases the Company Facility to the Company and the Company hereby hires and takes the Company Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Use of Facility. The Company shall use and occupy, and shall permit the use and occupancy, of the Company Facility for the Permitted Use, and with respect to the Zetterholm Sublease, the use expressly permitted thereunder during the term thereof, and not for any other purpose without the approval of the Agency.

Section 4.3 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency hereby delivers to the Company, and the Company acknowledges receipt of, and accepts, sole and exclusive possession of the Company Facility (subject to the provisions of Section 10.2 and the provisions of Section 8.3 hereof); the leasehold estate created hereby shall commence on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on the Expiration Date, or on such earlier date as may be permitted by Section 11.1 hereof, provided, however, that the Agency reserves the right not to terminate this Lease Agreement until all charges, fees and expenses of the Agency required to be paid under any of the Company Documents shall have been paid in full.

(c) The Agency, subject to the provisions of Section 3.5, shall not take any action, other than pursuant to Article X of this Lease Agreement, to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Company Facility and, at the request of the Company and at the Company's sole cost and expense, shall cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Company Facility as hereinabove provided. The rights of the Company hereunder and this Lease Agreement shall be subordinate to the Lien of the Mortgage.

Section 4.4 Rents and Other Amounts Payable.

(a) Throughout the Lease Term, the Company shall pay to the Agency as rent, (i) \$1.00 on the Closing Date and on each January 1 of each year of the Lease Term, and (ii) within ten (10) days after demand therefor, an amount equal to (A) the sum of the costs and expenses (including attorneys' fees) of the Agency and the members thereof incurred by reason of or in connection with the Agency's acquisition, construction, renovation, equipping, operation, ownership, financing, leasing or subleasing of the Company Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement, the Mortgage or any other agreement arising under or by virtue the transactions contemplated hereby, the payment of which is not otherwise provided for under this Lease Agreement, (B) the Agency Fee, (C) the Administrative Fee, and (D) all other sums due from the Company to the Agency under, by virtue of or in connection with this Lease Agreement, or otherwise.

(b) The Company, under the provisions of subsection 4.4(a) above, shall make the above-mentioned payments (and all other payments required hereunder), without set-off or deduction, in immediately available funds and without any further notice in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to timely make any payment required in this Section 4.4, the Company shall pay the same together with all additional interest or late payment penalties at the maximum rate of interest and amount permitted by law. The receipt by the Agency of any rent with knowledge of the breach of any covenant of this Lease Agreement shall not be deemed a waiver of such breach and no provision of this Lease 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 Lease 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 Company Facility or a portion thereof to such payor, or as a modification of the provisions of this Lease Agreement.

(c) All charges, payments, taxes and assessments, together with such other sums as are payable by the Company pursuant to the terms of this Lease Agreement, shall constitute additional rent, may be referred to as rent, shall be due and payable as rent under this Lease 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.

(d) This Lease 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 Company Facility, including the Mortgage, and the acquisition, construction, renovation, improvement, maintenance, operation, repair, replacement, lease, and sublease of the Company Facility, which may arise or become due during the Lease Term shall be paid by the Company. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, indemnify and hold the Agency and the Bank harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out any and all of the foregoing.

Section 4.5 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.4 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation 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 shall not (i) suspend, discontinue or abate any payment required hereof, (ii) fail to observe any of its other covenants or agreements in this Lease Agreement, (iii) except as provided in Sections 11.1 or 11.2 hereof, terminate this Lease Agreement for any cause

whatsoever including without limiting the generality of the foregoing, the failure to complete the Company Facility, failure of the Company to occupy or to use the Company Facility as contemplated in this Lease Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of the Company Facility or in the suitability of the Company Facility for the Company's purposes, or needs, failure of consideration, destruction of or damage to the Company Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Company Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or a duty, liability or obligation arising out of or in connection with this Lease Agreement.

Section 4.6 Rights and Obligations of the Company upon Prepayment of Obligations to the Bank. In the event all Indebtedness due the Bank and secured by the Mortgage, and all fees and expenses of the Agency and the Bank, required to be paid thereunder or hereunder shall be paid in full prior to the termination date specified in Section 4.3 hereof, and instruments evidencing such satisfaction of the obligations to the Bank shall have been duly recorded and/or filed to the satisfaction of the Agency, and provided no event has occurred or is continuing which either immediately or with the lapse of time or with notice, or both, shall constitute an Event of Default under this Lease Agreement, (i) all references in this Lease Agreement to the Bank, the Note, Indebtedness due the Bank, the Mortgage, and the Assignment of Rents and Leases shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Company Facility from the date of such payment until the Expiration Date, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Bank. The Company, at its sole cost and expense, shall obtain and record or file appropriate discharges or releases of the Mortgage, the Assignment Rents and Leases and any other security interests relating to the Company Facility or this Lease Agreement to the satisfaction of the Agency.

## ARTICLE V

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

#### Section 5.1 PILOT Payments.

(a) As long as this Lease 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, Longwood 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 leasehold interest (the "**Taxes on the Facility**"). The amounts of such PILOT Payments are set forth in Exhibit D 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 leasehold interest.

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Facility by the respective Taxing Authorities if the Facility were owned by the Company exclusive of the Agency's leasehold interest.

(c) Commencing with the 2017/2018 tax year, that is, the period commencing on December 1, 2017 and ending on November 30, 2021 (each such annual period commencing on December 1 is a "**Tax Year**"), and thereafter, the Company shall pay, as PILOT Payments, the amounts set forth on Exhibit D attached hereto and made a part hereof.

(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 Taxing Authorities or as the Agency may direct. 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 General Municipal Law, 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 January 31 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, special district taxes, and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) 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 subsequent to the Completion Date, 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 leasehold 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 leasehold interest in the Facility or any part thereof expires or terminates at such time in reference to any taxable status date as to make it difficult or impossible to place such Facility or part thereof on the tax rolls of any 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 leasehold 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 the Lease 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 Lease 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 Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility and the Additional Facilities, to take into consideration the value of surrounding properties of like character when assessing the Facility and the Additional Facilities. 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 leasehold interest therein, such complaining party shall not be entitled to receive a

refund or refunds of the PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit D hereto shall not be reduced. 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 Lease 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 the PILOT Payments set forth in Exhibit D hereto, and for as long as the Lease Agreement is in effect, expressly waives any rights it may have, and any Person claiming under or through the Company, or by virtue of the Company's interest in the Facility, 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 General Municipal Law) 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 Sales Tax Exemption.

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

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

(i) This Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) October 31, 2017, (B) completion of the initial acquisition, renovation and equipping of the Company Facility, (C) the Maximum Company Sales Tax Savings Amount has been received or realized on account of the Company



Facility, (D) the failure of the Company to file Form ST-340, as described below in Section 5.2 (f), (E) the expiration or termination of this Lease Agreement, (F) notice from the Agency to the Company of termination of the Sales Tax Exemption, and (G) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 (the date on which any of the foregoing occurs may be referred to herein as the “**Termination Date**”).

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Lease Agreement until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company or the Sublessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company or the Sublessee), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company or the Sublessee at the Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company or the Sublessee, without the prior written consent of the Agency.

(vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated and that the original executed Sales Tax Exemption Authorization Letter must be returned to the Company so that the Company can return the same to the Agency.

(ix) Company agrees that the aggregate amount of the Company Sales Tax Savings realized by the Company and by each Agent in connection with the Company Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(c) Procedures for Appointing Agents. If the Company desires to seek the appointment of the Sublessee, a contractor, a subcontractor or other party to act as the Agency’s agent (an “**Agent**”) for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

(i) For each Agent, the Company must complete and submit Form ST-60 to the Agency, as provided under General Municipal Law Section 874(9) and Form ST-60 and the

regulations relating thereto that require within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Company must complete and submit Form ST-60 to the Agency with an original copy of the completed Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit E executed by the Agent. [At the date hereof, Form ST-60 may be obtained via the internet by typing [http://www.tax.ny.gov/pdf/current\\_forms/st/st60\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf) into the address bar of an internet browser and saving the "fill-in" PDF of the form].

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit E, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

(iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement, and upon the termination, expiration or cancellation of each Sales Tax Agent Authorization Letter, the Company shall retrieve and promptly surrender the same to the Agency.

(d) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(e) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the construction, renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as Project operator of the Agency, was the

purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bill and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

(g) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Company shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit F, which accounts for all of the Company Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Closing Date and ending on the preceding June 30), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed Sales Tax Registry which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the period from the preceding July 1 to the Termination Date.

(h) Special Provisions Relating to Sales Tax Savings.

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

(ii) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which Company is not entitled or which are in excess of the Maximum Company Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover,

recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “**Commissioner**”) to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(i) Subject to the provisions of Section 5.2(h) hereof, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (or if the Company shall fail to promptly select such accountant or accountants or receive the Agency’s approval thereof, then such accountant or accountants may be selected by the Agency) all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to all inquiries by the Agency and/or such independent certified public accountant or firm of independent certified public accountants, as shall the Agency, or accountant or accountants, consider necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes to the extent permitted by the Act for one or more Mortgages securing an aggregate principal amount not to exceed \$1,520,000, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work (the “**Mortgage Recording Tax Exemption**”). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

Section 5.4 Recapture of Agency Benefits.

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

(i) If there shall occur a Recapture Event after the Closing Date, 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, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2020 but on or before December 31, 2021, 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, eight percent (80%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2022 but on or before December 31, 2023, 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 percent (60%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2024 but on or before December 31, 2025, 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, forty percent (40%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2026 but on or before December 31, 2027, 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, twenty percent (20%) of the Recaptured Benefits; and

(vi) If there shall occur a Recapture Event after January 1, 2028, 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, derived solely from the Agency’s participation in the transaction contemplated by this Lease Agreement or the Equipment Lease Agreement, including the amount equal to 100% of:

(i) the Mortgage Recording Tax Exemption; and

(ii) the Company Sales Tax Savings and the Sublessee Sales Tax Savings; and

(iii) real property tax abatements granted or realized pursuant to or by reason of Section 5.1 (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 Lease 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, if any, 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, through the act or omission of the Company; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Company or the Sublessee 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 8.14 of this Lease Agreement, which failure, in the sole judgment of the Agency, is not reflective of the business conditions of the Company or the Sublessee, including 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) The Application, or any documentation in support of the Application, contained a false or misleading statement as to any fact material to the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and in the sole judgement of the Agency, such false or misleading statement or omission was made knowingly or intentionally for the purpose of obtaining the financial assistance, or any deviations from the Application which would constitute a significant diminution of the Company’s or the Sublessee’s activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or

(vi) The Company receives Sales Tax Savings in connection with the Facility, including the Project Work, in excess of the Maximum Company Sales Tax Savings Amount, or the Sublessee receives Sales Tax Savings in connection with the Facility in excess of the Maximum Sublessee Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the excess Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company or the Sublessee to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.14 hereof in any Tax Year but the Company and the Sublessee

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 and the Sublessee have complied with the required number of FTEs pursuant to Section 8.14 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 or the Sublessee 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, the Sublessee and their affiliates so long as the Company, the Sublessee and their 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 of each entity, including the Company and the Sublessee, located at the Facility for such Tax Year, 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 or the Sublessee 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 Company Facility by Company.

(a) The Agency shall not be required to make any repairs, replacements or improvements of any kind upon or with respect to, or to maintain, the Company Facility.

(b) The Company shall not abandon, or cause or permit any waste to, the Company Facility, and shall keep the Company Facility in good and safe condition. The Company shall not remove any part of the Company Facility outside the jurisdiction of the Agency. At the Company's sole cost and expense, the Company shall, throughout the Lease Term, take good care of the Company Facility, including the fixtures and appurtenances thereto and all structures, improvements, betterments, landscaping, utilities and equipment, devices, heating, air conditioning, ventilating, plumbing systems, and all appurtenances, fixtures and other facilities used or useful in connection with the use, operation or occupancy of the Company Facility, and all alterations and additions thereto and restorations and replacements thereof, and make all repairs, replacements, and restorations thereto, as and when appropriate or required to preserve same in good, safe, sound, economic condition and good working order, whether such repairs, replacements or restorations are ordinary or extraordinary or foreseen or unforeseen. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, protect, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, from the failure by the Company to comply with the foregoing. The Company shall operate the Company Facility in a sound and economic manner.

(c) The Company may make, from time to time, at its sole cost and expense, any structural and non-structural additions, modifications or improvements to the Company Facility or any part thereof which it may deem desirable provided that the consent of the Agency shall be obtained in each instance, and further provided that such actions do not adversely affect the structural integrity of the Company Facility. All such structural additions, modifications or improvements so made by the Company shall become a part of the Company Facility. The Company shall deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to, or other satisfactory interest in, such Property and to perfect or protect the Lien of the Mortgage.

(d) All improvements, additions, alterations, repairs, replacements, and restorations (i) shall not impair the continuity of the use and operation of the Company Facility as contemplated hereby for longer than reasonably necessary, (ii) shall be effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) shall be promptly and fully paid for by the Company, and (v) shall not change the nature of the Company Facility so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act for use for the general purposes specified in this Lease Agreement.

(e) The Company, at its own cost and expense, shall promptly execute and comply with all present and future valid statutes, orders, ordinances, regulations and requirements and rules of the federal, state, county, municipal and other local governments, if any, and all their departments and bureaus, and of the New York Board of Fire Underwriters or any other similar body having jurisdiction over the Company Facility, whether usual or unusual, ordinary or extraordinary, and whether or not related to (i) structural or non-structural changes or requirements, (ii) to the use or occupancy made of the Company Facility, (iii) any unlawful use,



negligence of the Company, or (iv) any breach or default of the Company under this Lease Agreement.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.11 hereof, the Company may install from time to time, at its sole cost and expense, additional Facility Equipment, which such Facility Equipment or other personal property shall become, or be deemed to become, part of the Company Facility. The Company shall execute and deliver to the Agency such documents and instruments as may be deemed necessary by the Agency to convey title to such additional Facility Equipment to the Agency and subject such additional Facility Equipment to the Lien of the Mortgage. Subject to the prior consent of the Agency, the Company, from time to time, may remove or permit the removal of any other machinery, equipment and other personal property from the Company Facility and may create or permit to be created any Lien on any other machinery, equipment or other personal property; provided that any such removal of any other machinery, equipment or other personal property shall not adversely affect the integrity or value of the Company Facility, impair the overall operating efficiency of the Company Facility for the purposes for which it is intended or violate the Mortgage and provided, further, that if any damage is occasioned to the Company Facility by such removal the Company shall promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the Sales Tax Exemption and the Real Property Tax Abatements, the Company shall pay as the same respectively become due and before any fine, penalty, interest or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments, and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Company Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including any sales or use taxes imposed with respect to the Company Facility or any part or component thereof, or the rental of the Company Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Agency from the Company Facility, (ii) all utility and other charges, including "service charges", incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Company Facility, (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term, and (iv) all Recaptured Benefits.

(b) The Company may in good faith contest any such taxes, assessments and other charges set forth in subsection 6.3(a) above. In the event of any such contest, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided, however, that (i) neither the Company Facility nor any part thereof or interest therein will be in any immediate danger of being sold, forfeited or lost by reasons of such proceedings, and (ii) the Company shall have set aside in 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. The aforesaid right to refrain from

paying taxes or assessments and to reserve for any such contested obligations shall specifically not apply to payments required on account of the PILOT Payments or the Recaptured Benefits.

(c) If the Company successfully contests any taxes or assessments set forth in the subsection 6.3(a) above, the Company shall look solely to the affected Taxing Authorities, and not the Agency, for any refunds due or awarded as a result thereof.

(d) Within thirty (30) days after request therefor, the Company shall deliver to the Agency official receipts of the affected Taxing Authorities or other proof satisfactory to the Agency evidencing payment of any and all taxes, assessments or payments (if paid to other than the Agency), including PILOT Payments.

(e) Without limiting the generality of the obligations of the Company under this Lease Agreement, the Company shall defend, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out of any failure by the Company to comply with the provisions of this Section 6.3.

Section 6.4 Insurance Required. Except as otherwise provided herein below, at all times throughout the Lease Term, including during the Construction Period, at its sole cost and expense, the Company shall maintain, and shall cause each tenant and occupant of the Company Facility to maintain, insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including:

(a) Insurance against physical loss or damage to the Company Facility as provided under a standard "all risk" property policy, including flood coverage (to the extent the Company Facility is in a flood zone), in amounts not less than the actual replacement cost of all improvements and equipment, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company and approved by the Agency; such policies shall contain Replacement Cost and Agreed Amount Endorsements and may contain deductibles of not more than \$5,000.00 per occurrence; during the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Commercial general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use, occupancy, maintenance, operation, improvement or other acts or omissions with respect to the Company Facility, in an amount not less than \$5,000,000.00 per occurrence, annual aggregate, including personal injury liability coverage, broad form blanket contractual liability coverage for liability assumed under this Lease Agreement and all other contracts relative to the Company Facility, broad form property damage coverage, fire damage legal liability coverage, coverage for the "XCU" hazards, an endorsement providing products' liability/completed operations coverage, and an endorsement reflecting that this insurance is intended as primary coverage for the Agency and all other indemnitees named in this Lease Agreement; during the period of the performance of any construction, owners contractors protective insurance in an amount not less than \$5,000,000.00 per occurrence, annual aggregate.

(c) During the period of the performance of any construction, including during the Construction Period, for the benefit of the Agency and others hereafter named by the Agency from time to time, Builders Risk insurance covering the total completed value, including “soft costs” with respect to the improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and material furnished in connection with such construction or repair of improvements or equipment, together with such “soft costs” endorsements and such other endorsements as the Agency may require, and general liability, worker’s compensation and automobile liability insurance with respect to the improvements being constructed, altered or repaired; furthermore, each contractor and subcontractor constructing, improving or altering the Company Facility shall be required to carry comprehensive general liability insurance with limits acceptable to the Company and the Agency and containing coverages for premises operations, contractors protective, owner’s protective, completed operations (products liability), the X, C and U exclusions removed and coverage for all owned, non-owned and hired vehicles with non-ownership protection for contractor’s or subcontractor’s employees;

(d) Comprehensive boiler and machinery insurance on any of the Facility Equipment on or in the Company Facility, in an amount acceptable to the Agency for damage to property, bodily injury or death resulting from such covered perils as found in a standard comprehensive boiler and machinery policy; such policies may contain deductibles of not more than \$5,000.00;

(e) Worker’s compensation insurance, disability benefits insurance, and each other form of insurance which the Agency, the Company or any occupant of the Company Facility is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or such occupancy who are located at or assigned to the Company Facility;

(f) During the Construction Period (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 \$1,000,000.00 (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 \$1,000,000.00 (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 \$5,000,000.00;

(g) During the Construction Period, Owners and Contractor's Protective Liability insurance, with a combined single limit of \$1,000,000.00 per occurrence on account of bodily injury, personal injury, including death, or property damage; such coverage shall not contain an exclusion for construction activities.

(h) A policy or policies of flood insurance in an amount not less than \$1,000,000.00 or the maximum amount of flood insurance available with respect to the Company 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;

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

#### Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be in form and substance satisfactory to the Agency, and procured and maintained with financially sound and generally recognized responsible insurance companies selected by the Company and approved by the Agency and authorized to write such insurance in the State; the insurance company providing the coverage described at Section 6.4 (b) and (g) shall be the same. The company issuing the policies required by Section 6.4 (a), (b), (c), (d), (f), (g), (h) and (i) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance shall be written with such deductibles amounts as shall be acceptable to the Agency. All policies evidencing such insurance shall provide for payment of the losses to the Company and the Agency as its interest may appear, and at least thirty (30) days' written notice of the cancellation or modification thereof to the Agency. The policies required by Section 6.4 (a) and (c) hereof shall contain standard New York mortgagee clauses in the name of the Bank until payment in full of the Indebtedness secured by the Mortgage, requiring that all Net Proceeds of insurance resulting from any claim for loss or damage covered thereby be paid to the Bank, for the benefit of the Bank. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4 (a), (c), and (h) and the Net Proceeds thereof have been or may be granted by the Agency to the Bank and the Company consents thereto. The policies maintained hereunder shall contain appropriate waivers of subrogation, shall provide that such coverages shall be primary, irrespective of any other insurance that may be maintained by the Company,

the Agency or otherwise, and shall be specific to the Company Facility, and no other locations. Each of the policies required by Section 6.4 shall name the Agency as an additional insured except the policy required by Section 6.4(g) shall name the Agency as the sole named insured.

(b) All such policies of insurance, or a certificate or certificates of the insurers, shall be in form and substance satisfactory to the Agency, and shall be deposited with the Agency on or before the Closing Date; the Company acknowledges that if requested at any time by the Agency, the Company shall deliver the policies, and not merely the certificates, to the Agency. The Company shall deliver to the Agency at least thirty (30) days prior to the expiration of the last such certificate issued pursuant hereto a certificate reciting that there is in full force and effect for the next succeeding twelve (12) month period insurance in the amounts and of the types required by Sections 6.4 and 6.5 hereof. Upon delivery of such certificate, the Company shall also deliver to the Agency proof of payment of the premium earned thereby. Prior to expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(c) The Company shall not violate or permit to be violated any of the conditions or provisions of any insurance policies maintained pursuant to this Lease Agreement and shall comply with the requirements of any company issuing said insurance in order to maintain said insurance in full force and effect. In the event that any policy shall be canceled for non-compliance by the Company, the Company shall procure forthwith a substitute policy in form and content satisfactory to the Agency.

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), (c) and (h) 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), (d), (e), (f), (g) and (i) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, payment in lieu of taxes, assessment or other charge required to be paid by Section 6.3 hereof, (ii) to maintain insurance required to be maintained by Sections 6.4 and 6.5 hereof, or (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Company Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Company Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b)), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency may pay such tax, payment in lieu of taxes, assessment or other governmental charge or the premium for such insurance, or perform such act. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed after notice of intention to make such payment shall have been given by the Agency to the Company; and in the case of any tax, payment in lieu of taxes, assessment or governmental charge, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency

hereunder arising in consequence of such failure by the Company. The Company shall reimburse the Agency on demand for any amount so paid, and expense incurred by the Agency pursuant to this Section 6.7, together with interest and late charges thereon from the date of payment at the maximum rates permitted by law.

ARTICLE VII  
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction.

(a) If the Company Facility 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 or restore the Company Facility; (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Company Facility is replaced, repaired, rebuilt or restored); (iii) except as otherwise provided in subsection (b) of this Section 7.1, the Company shall promptly replace, repair, rebuild or restore the Company Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction with such changes, alterations and modifications as may be desired or approved by the Company, provided that such changes, alterations or modifications do not so change the nature of the Company Facility that it does not constitute a “project” as such quoted term is defined in the Act; and (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Bank and except as otherwise provided in Section 11.1, applied by the Bank pursuant to the terms of the Mortgage. Upon full compliance with the foregoing provisions of this paragraph, and provided no event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes an Event of Default under this Lease Agreement, then, subject to the provisions of the Mortgage, any balance remaining thereafter may be retained by the Company. All replacements, repairs, rebuilding or restoration made pursuant to this Section 7.1, shall automatically become a part of the Company Facility as if the same were specifically described herein.

(b) If no Event of Default shall have occurred and the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Company shall not be obligated to replace, repair, rebuild or restore the Company Facility, the Net Proceeds derived from such insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Sections 10.2, 10.4 and 10.5 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company.

(c) Until the occurrence of an Event of Default and the continuance thereof for ten (10) days, subject to the terms of the Mortgage, the Company shall have the right to settle and adjust all claims under, and collect the Net Proceeds of any policies of insurance required by Section 6.4(a) and (c) hereof.

(d) All such repair, replacement, rebuilding, restoration or relocation of the Company Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Company Facility as if the same were specifically described herein. Subject to the terms of the Mortgage, any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Company.

(e) If the Company Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, then the Company shall exercise its option to terminate this Lease Agreement as provided in Section 11.1 hereof.

#### Section 7.2 Condemnation.

(a) If, at any time during the Lease Term, the whole or any part of title to, or the use of, the Company Facility shall be taken by Condemnation, the Agency shall have no obligation to restore or replace the Company Facility, there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, and the Net Proceeds derived from the Condemnation shall be paid to the Bank and applied by the Bank pursuant to the terms of the Mortgage. Except as otherwise provided in subsection (b) of this Section 7.2, the Company shall promptly after payment of the Net Proceeds of such condemnation: (i) restore the Company Facility (including the purchase of necessary land in replacement of any land taken by Condemnation) to substantially the same condition and value as an operating entity as existed prior to such Condemnation; or (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value, reasonably acceptable to the Agency, as an operating entity as the Company Facility (“**Substitute Facilities**”). Such Substitute Facilities shall (x) constitute a “project” as such quoted term is defined in the Act, and (y) be subject to no Liens prior to the Lien of the Mortgage other than Permitted Encumbrances. The Company Facility, as so restored, or the Substitute Facilities shall automatically become part of the Company Facility as if the same were specifically described herein. Upon full compliance with the foregoing provisions of this paragraph, and provided no event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes an Event of Default under this Lease Agreement, then, subject to the provisions of the Mortgage, any balance remaining thereafter may be retained by the Company.

(b) If no Event of Default shall have occurred and the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Company shall not be obligated to restore the Company Facility or acquire Substitute Facilities, the Net Proceeds derived from such Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Sections 10.2, 10.4 and 10.5 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company.

(c) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any Condemnation proceeding with respect to the Company Facility. Until the occurrence of an Event of Default hereunder and the continuance thereof for ten (10) days, and subject to the terms and provisions of the Mortgage, the Company shall have the sole right to control any such proceedings and to adjust all claims and make any settlement therein; and in no event shall the Agency voluntarily settle, or consent to the settlement of, any Condemnation proceeding with respect to the Company Facility without the written consent of the Company.

(d) All such replacement or restoration or relocation of the Company Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Company Facility as if the same were specifically described herein. Subject to the terms of the Mortgage, any balance of such Net Proceeds remaining after payment of all costs of replacement or restoration shall be retained by the Company.

(e) If the Company Facility has been substantially condemned and is not replaced or restored, then the Company shall exercise its option to terminate this Lease Agreement as provided in Section 11.1 hereof.

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

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

## ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by the Agency. THE AGENCY HAS NOT 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 SUBLESSEE OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE COMPANY OR THE SUBLESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF AND SUBLESSEE, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY AND SUBLESSEE. THE AGENCY SHALL NOT



BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY, SUBLESSEE 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.

Section 8.2 Hold Harmless Provisions.

(a) The Agency, its directors, members, officers, agents (except the Company and the Sublessee), and employees (the “**Indemnified Parties**”) shall not be liable for, and the Company shall 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 reasonable attorneys’ and experts’ fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement or any other Company Document) 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) the Project Work or the acquisition, construction, renovation, equipping, owning, operating, repairing, replacing, improving, leasing, subleasing or use of the Facility, including all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this Lease Agreement, and all causes of action and reasonable attorneys’ fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including this Section) or any of the other documents delivered by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the Project Work or the acquisition, construction, renovation, equipping, owning, repairing, replacing, improving, operation, lease, sublease, or use of the Facility, including by reason of any violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production, Release 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, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof

in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a breach of or failure to perform any covenant made by the Company in this Lease Agreement or any other Company Document, 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. The foregoing indemnities are wholly independent of and in addition to any indemnification provided to the Agency as part of the application process, or contained elsewhere, including under any other Transaction Document or other instrument.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its officers, members, agents and employees, 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 expiration of any statute of limitations, (viii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, (ix) 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, or the termination of, the Lease Agreement, (x) the death or legal incapacity of any of the Company, the Sublessee or Guarantor, (xi) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (xii) the redemption, acceleration or maturity of the Note, or the satisfaction, extinguishment or foreclosure under the Mortgage, or (xi) any other circumstances which might

otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Lease Agreement, or any other Transaction Document.

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

(d) Notwithstanding any provisions of this Section 8.2, the Agency retains the right to defend itself, and in any such defense of itself, the Agency may select its own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses shall be paid by the Company.

(e) To effectuate the provisions of this Section 8.2, the Company shall provide for and insure in the liability policies required in Section 6.4 hereof, its liabilities assumed pursuant to this Section 8.2.

Section 8.3 Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right, but not obligation, to enter upon and at all times to inspect the Facility, including for the purpose of ascertaining the environmental condition at, on, or in the vicinity of the Facility.

Section 8.4 Company and Sublessee to Maintain Existence; Conditions Under Which Exceptions Permitted. The Company shall, and shall cause the Sublessee to, at all times during the Lease Term, (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, except with consent of the Agency.

Section 8.5 Qualification in the State. The Company and the Sublessee throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to Provide Information. The Company shall, and shall cause the Sublessee to, (a) within thirty (30) days after the end of each calendar year of the Lease Term, provide to the Agency, and certify to the accuracy of, the Company's and the Sublessee's respective New York State Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (currently, Form NYS-45), including the attachments thereto (the Company and the Sublessee shall redact employees' social security numbers), for the fourth quarter of such calendar year (if such form shall be superceded or cease to be used, the Agency may designate another form or other method by which to obtain such information reported thereon), together with a detailed analysis satisfactory to the Agency of the full time equivalency

employment, and (b) whenever requested by the Agency, provide and certify or cause to be provided and certified, within thirty (30) days after request, such information concerning the Company, the Sublessee, their respective finances, operations, and employment, the Facility and other topics necessary in the judgment of the Agency to enable the Agency to make any report required by law (including the Act, the Public Authorities Accountability Act of 2005, or 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 Controller), governmental regulation, the Company Documents, the Sublessee Documents, or otherwise, or requested for any other reason desired by the Agency for its business purposes. Without limiting the foregoing, annually, the Company shall provide, and shall cause each occupant of the Facility to provide, to the Agency, within thirty (30) days after request 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 shall, and shall cause the Sublessee to, file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law and shall provide to the Agency such information as the Agency may require to enable, in the Agency's sole discretion, to comply with applicable law, including Section 874(9) of the New York State General Municipal Law; the Company shall, and shall cause the Sublessee to, submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance; and the Company shall, and shall cause the Sublessee to, provide to the Agency within ten (10) days after request therefore, true, accurate and complete copies of such reports and returns filed by the Company or the Sublessee, certified by the chief executive officer of the Company or the Sublessee, as appropriate, to be true, accurate and complete, as the Agency may request from time to time.

Section 8.7 Books of Record and Account; Financial Statements. The Company shall, and shall cause the Sublessee to, at all times, maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company and the Sublessee, respectively. The Company shall furnish and shall cause the Sublessee to furnish to the Agency within thirty (30) days of their filing, copies of all reports filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended (the "1934 Act"), relative to the Company or the Sublessee.

Section 8.8 Compliance With Order, Ordinances, Etc.

(a) The Company, throughout the Lease Term, shall, at its sole cost and expense, promptly comply with, and shall cause all tenants, subtenants, occupants and invitees to comply with, the provisions of Exhibit C hereto, and all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to the acquisition, construction, renovation, operation, maintenance, and equipping thereof, or to any use, manner of use or condition of the

Facility or any part thereof and, without limiting the generality of the Company's obligations under this Lease Agreement, shall defend, indemnify and hold the Agency and its officers, members, directors, agents and employees harmless from any and all claims, suits, actions, proceedings, liabilities, obligations, damages, penalties, fines, costs and expenses (including costs of investigation and laboratory fees, consultant fees, and attorney's fees and expenses) arising out of, or resulting from, any failure by the Company to so comply.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) other than the provisions of Exhibit C. 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 requirement, the Facility or any part thereof may be materially endangered or subject to loss 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.

(c) Notwithstanding the provisions of Section 8.8(b) hereof, if, because of a breach or violation enumerated in Section 8.8(a) without giving effect to Section 8.8(b) hereof, either the Agency, or any of its members, directors, officers, agents, or employees, shall be threatened with a fine or imprisonment or otherwise jeopardized, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of such indemnified party to the Agency and its members, directors, officers, agents, servants and employees sufficient, to the extent permitted by applicable law, to remove the threat of such fine or imprisonment or jeopardy.

#### Section 8.9 Environmental Matters.

(a) The Company shall keep the Facility free of all Hazardous Materials except in compliance with applicable law, and shall, and shall cause, all operators, tenants, subtenants, licensees, users, and occupants of the Facility to, acquire, construct, renovate, equip, use, operate, maintain, repair, replace, improve, and manage the Facility in accordance with all 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, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees, users, occupants and invitees of or with respect to the Facility to, obtain and comply with all applicable Environmental Permits.

(c) The Company shall not cause or permit any changes to be made in the present or intended acquisition, construction, renovation, equipping, use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the Project Work, or for the storage of petroleum or

petroleum based products, or as a landfill or waste management or disposal site, (ii) violate any applicable Environmental Law, (iii) constitute a violation or noncompliance with any Environmental Permit, or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall, and shall cause each contractor, subcontractor, operator, tenant, subtenant, licensee, user, occupant and invitee to, promptly provide the Agency with a copy of all notifications which any of them give or receive 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 (whether provided to the Company or any contractor, subcontractor, operator, tenant, subtenant, licensee, user, occupant and invitee, or other person) which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency in writing of such verbal, telephonic or electronic notification, confirm such notice, and provide the Agency with the particulars thereof, including (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 promptly 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, and such additional information and documentation as the Agency may request.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are 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. 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 the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right

but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) If at any time the Agency obtains any notice or information that the Company, Sublessee or the Facility or the construction, renovation, equipping, use or operation of the Facility may be in violation of an Environmental Law or in noncompliance 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. The Agency may require that the audit 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 conduct of a scientific testing. The Agency may also require if it deems 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 the 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, the Company shall promptly undertake and diligently pursue to completion all necessary and appropriate investigative, containment, removal, clean up and other remedial actions required by any Environmental Law or the Agency, using methods recommended by the professional engineer or other environmental scientist who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities, and the Agency.

(g) 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 believe that they are required to disclose any matter contained therein to such agency or authority. 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.

(h) Notwithstanding anything to the contrary contained herein, and without limiting any other provisions of this Lease Agreement, the representations, warranties, covenants and indemnifications of the Company contained in this Section 8.9 shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Facility or in, to or under the Lease Agreement.

Section 8.10 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, including by reason of any labor, services or materials rendered or supplied or claim to the rendered or supplied with respect to the Facility or any part thereof, and shall defend, indemnify and hold harmless the Agency, its members, officers, directors, agents and employees, from any all claims, suits, actions, proceedings, liabilities, obligations, damages, penalties, fines, costs and expenses (including costs of investigation and laboratory fees, consultant fees, and attorney's fees and expenses) of whatever kind or nature, known or unknown, foreseeable or unforeseeable, contingent or otherwise, relating to, resulting from or arising out any failure by the Company to comply with the terms of this subsection (a).

(b) Notwithstanding the provisions of subsection (a) of this Section 8.10, 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 that by nonpayment of any such item or items, the Lien of the Mortgage may be materially endangered or the Company Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing the Lien to be removed or by taking such other actions as may be satisfactory to the Agency to protect its interests; provided, however, any mechanic's Lien shall be removed within thirty (30) days of the filing thereof to the satisfaction of the Agency.

Section 8.11 Identification of Facility Equipment. All Facility Equipment which is or may become the property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. In this regard, all improvements, machinery, equipment and other Property of whatever nature affixed or attached to the Land or the Improvements or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized solely for purposes of construction of the Company Facility and such improvements, machinery, equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 8.12 Depreciation Deductions. The Company shall be entitled to all depreciation deductions with respect to any depreciable property and investment tax credits with respect to the Company Facility pursuant to the Code.

Section 8.13 Employment Opportunities, Notice of Jobs. The Company shall, and will cause all sublessees to, except as otherwise provided by collective bargaining contracts or agreements to which it or a sublessee 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 shall, and shall cause each sublessee, if any, to, except as otherwise provided by collective bargaining contracts or agreements to which it or a sublessee is a party, first consider for such new employment



opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 8.14 Employment Commitments. The Company shall cause the Company and the Sublessee collectively to achieve employment levels of at least three (3) Full Time Equivalent Employees as of December 31, 2016, and thirteen (13) Time Equivalent Employees as of December 31, 2017, and thereafter to maintain employment levels of at least thirteen (13) Full Time Equivalent Employees at all times during the Lease Term.

Section 8.15 Section 875 Compliance. The provisions of Section 875 of the General Municipal Law of the State of New York are hereby incorporated in, and made a part hereof, and the Company shall comply, and shall cause the Sublessee, and all other agents, project operators and other persons and entities to comply, and to undertake in writing satisfactory to the Agency to comply, with the provisions of such law, and all regulations and directives promulgated thereunder.

ARTICLE IX  
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;  
MORTGAGE AND PLEDGE OF INTERESTS

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 Company Facility or any part thereof or any of its rights under this Lease Agreement without the prior consent of the Company and, if required under the Loan Documents, the Bank.

(b) With the prior written consent of the Agency and, if required under the Loan Documents, the Bank, the Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Company Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver, and request the Bank to execute and deliver, any and all instruments necessary or appropriate, and approved by the Agency, to so release such part of, or interest in, the Land and convey such title thereto or interest therein free from the Lien of the Mortgage, to the Company. 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 (if the Agency so requests) of the Land conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement, no event has occurred or is continuing, which either immediately or with the lapse of time, or with notice, or both, shall constitute an Event of Default under this Lease Agreement, and such Land or interest therein is not necessary, desirable or useful for the Company Facility.

(c) No conveyance of any Land or interest therein effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by the Company under Section 5.4 hereof.

Section 9.2 Removal of Facility Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Facility Equipment. In any instance where the Company determines that any item of Facility Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of the Agency, may remove such items from the Company Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal shall not violate the Mortgage or materially impair the operation of the Company Facility for the purpose for which it is intended or change the nature of the Company Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company such instruments, in such form and substance as the Agency shall approve, as the Agency shall determine to be necessary and appropriate to enable the Company to sell or otherwise dispose of any such item of Facility Equipment subject to the rights, if any, of the Bank. The Company shall pay any costs (including counsel fees) incurred in transferring title to and releasing from the Lien of the Mortgage any item of Facility Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Facility Equipment pursuant of this Section 9.2 shall not entitle the Company to any abatement or diminution of the rents payable by it under Section 5.4 hereof.

### Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement shall not be assigned, in whole or in part, without the written consent of the Agency, and, except for the sublease of all of the Company Facility to the Sublessee, the Company Facility shall not be further subleased (including successive generation subleases) nor used or occupied by an person other than the Company or the Sublessee, in whole or in part, without the written consent of the Agency. Any assignment or sublease, except the sublease to the Sublessee under the Sublease, shall be on the following conditions:

(1) No assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(2) The assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(3) The Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease, as the case may be, and the instrument of assumption, in form and substance satisfactory to the Agency;

(4) The Company Facility shall continue to constitute a "project" as such quoted term is defined in the Act; the provisions of the Act shall not be violated by the assignment or sublease, or the use or occupancy of the Company Facility;

(5) Neither the validity nor the enforceability of the Company Documents or the Sublessee Documents shall be adversely affected or violated thereby;

(6) Each sublessee shall execute and deliver an Agency Compliance Agreement in form and substance satisfactory to the Agency;

(7) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to this subsection (a) of this Section 9.3, the Company, at its sole cost and expense, shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency, of Independent Counsel that neither the validity nor the enforceability of the Company Documents or the Sublessee Documents will be adversely affected or violated thereby;

(8) such other and further requirements as the Agency may determine in its sole discretion.

(b) If the Company or the Sublessee is a corporation, the transfer of a majority of the issued and outstanding capital stock of the Company or the Sublessee or the issuance of additional shares of the Company or the Sublessee such that if the additional shares had first been issued to the existing shareholders of the Company or the Sublessee and then transferred to the acquiring shareholders, such event would have constituted a transfer of a majority of the issued and outstanding capital stock of the Company or the Sublessee within the meaning of this Section, or, if the Company or the Sublessee is a partnership or a limited liability company, the transfer of a majority of the total interest in the Company or the Sublessee, however any of such corporate stock transfers or issuances or partnership or limited liability company interest transfers are accomplished, whether in a single transaction or in a series of related or unrelated transactions, such transactions shall be deemed an assignment of this Lease Agreement. The transfer of outstanding capital stock of the Company or the Sublessee, for purposes of this Section, shall not include sale of such stock by persons other than those deemed "insiders" within the meaning of the 1934 Act, or the initial sale by the Company or the Sublessee of stock to persons other than those deemed "insiders" within the meaning of the 1934 Act, provided in each such instance the sale is effected through the "Over the Counter Market" or through any recognized stock exchange.

(c) If the Company's interest in this Lease Agreement is assigned, whether or not in violation of the provisions of this paragraph, the Agency may collect rent from the assignee. If the Company Facility or any part thereof are sublet to, or occupied by, or used by any person other than the Company or the Sublessee, whether or not in violation of this paragraph, the Agency, after default by the Company under this Lease Agreement, may collect rent from the subtenant, user or occupant. In either case, the Agency shall apply the net amount collected to the rent reserved in this Lease Agreement, but no such assignment, subletting, occupancy, or use, whether with or without the Agency's prior consent, nor any such collection or application of rent, shall be deemed a waiver of any term, covenant or condition of this Lease Agreement or be deemed the acceptance by the Agency of such assignee, subtenant, occupant or be deemed acceptance by the Agency of such subletting, occupancy or use and same shall not relieve the Company from its obligation to obtain the express prior consent of the Agency to any further assignment, subletting, occupancy or use. Neither any assignment of the Company's interest in this Lease Agreement nor any subletting, occupancy or use of the Company Facility or any part thereof by any person other than the Company, nor any collection of rent by the Agency from

any person other than the Company as provided in this subsection, nor any application of any such rent as provided in this subsection (b) shall, in any circumstances, relieve the Company of its obligation to fully observe and perform the terms, covenants and conditions of this Lease Agreement on the Company's part to be observed and performed.

(d) If the Agency shall so request, as of the purported effective date of any assignment or sublease 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 (4) above, and (ii) of Independent Counsel as to items (1), (2), and (5) above.

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

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

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

#### Section 9.4 Merger of Agency.

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

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and the Bank. The Agency shall promptly furnish such additional information with respect to any such transaction as the above mentioned Persons reasonably may request.

### ARTICLE X EVENTS OF DEFAULT AND REMEDIES

#### Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement and the terms "Event of Default" or "default" shall mean, whenever used in this Lease Agreement, any one or more of the following events:

(1) The failure by the Company to pay or cause to be paid when due, the amounts specified to be paid pursuant to Section 4.4 hereof; or

(2) The failure by the Company to observe and perform any covenant contained in Sections 2.2(h), 2.2(j), 2.2(k), 2.2(n), 5.2, 6.3, 6.4, 6.5, 8.2, 8.4, 8.5, 8.6, 8.8, 8.9, 8.14, 8.15, 9.3, 10.4, 10.5, and 10.6 hereof; or

(3) The failure by the Company to pay or cause to be paid PILOT Payments or Recaptured Benefits, in each case when due, or

(4) Any representation or warranty of the Company herein, the Sublessee in the Equipment Lease Agreement, or in any agreement, instrument, certificate, application, statement or report furnished in connection herewith or therewith is false or misleading in any material respect; or

(5) The dissolution or liquidation of the Company or the Sublessee; or the failure by the Company or the Sublessee to lift within thirty (30) days any execution, garnishment or attachment of such consequence as may impair its ability to carry on its operations; or the Company or the Sublessee is generally not paying its debts as they become due; or the Company or the Sublessee makes an assignment for the benefit of creditors, commences (as the debtor) a case in Bankruptcy or commences (as the debtor) any proceeding under any other insolvency law; or a case in Bankruptcy or any proceeding under any other insolvency law is commenced against the Company or the Sublessee (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company or the Sublessee as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or the Sublessee or remains undismissed for sixty (60) days during which time the Company or the Sublessee is diligently and in good faith contesting the same (or if such case or proceeding is not diligently or in good faith contested during such period, then upon the filing of such case or proceeding), or the Company or the Sublessee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company or the Sublessee for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors; or

(6) The occurrence of a default under any of the Loan Documents; or

(7) The occurrence of a default under any of the Company Documents or the Sublessee Documents; or

(8) The occurrence of a default under any Agency Compliance Agreement; or

(9) The invalidity, illegality or unenforceability of, or any defect in, any of the Company Documents, the Sublessee Documents, any Agency Compliance Agreement or any other document contemplated hereby or thereby; or

(10) The failure by the Company to observe and perform any other covenant, condition or agreement hereunder that is not referred to in the preceding provisions of this Section 10.1(a) on its part to be observed or performed for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, provided to the Company by the Agency unless the Agency shall agree in writing to an extension of such time prior to its expiration.

(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 Section 4.1 or Section 6.1(b) of this Lease Agreement (other than the Company's indemnification obligations hereunder) and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Bank, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 10.1. The term "force majeure" as used herein shall include, 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, 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. 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.

#### 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:

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon same shall become immediately due and payable, all unpaid rent, fees and other charges payable under this Lease Agreement, including unpaid and past due PILOT Payments, and all due and owing Recaptured Benefits; provided, however, that if an Event of Default specified in Section 10.1(a)(5) hereof shall have occurred, such unpaid rent, fees and other charges due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(2) Terminate the Company Lease Agreement and this Lease Agreement, convey the Facility Equipment to the Company and terminate the Sales Tax Exemption

Authorization. The Agency shall have the right to execute lease termination documents with respect to the Company Facility as considered necessary or appropriate by the Agency and to place the same on record in the Suffolk County Clerk's Office, at the expense of the Company and in such event the Company waives delivery and acceptance of such 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 the Company's behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed; upon request of the Agency, the Company shall execute, acknowledge and deliver to the Agency such additional or confirming instruments, in form and substance satisfactory to the Agency, to further evidence the Agency's appointment hereunder as the Agency may request from time to time;

(3) 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 to the Agency, whether or not under this Lease Agreement, the Agency Compliance and Guaranty Agreement, or otherwise, and enforce the obligations, agreements or covenants of the Company under this Lease Agreement, the Company Lease Agreement, the Agency Compliance and Guaranty Agreement, or otherwise.

(b) No action taken pursuant to this Section 10.2 (including termination of this Lease Agreement or Company Lease Agreement) shall relieve the Company from its obligation to make all payments required by Section 4.4 hereof or due and owing PILOT Payments or Recaptured Benefits, or under the Agency Compliance and Guaranty Agreement.

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

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of the Company Lease Agreement, this Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Company Document, 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 or therein contained, the Company shall, on demand therefor, pay to the Agency the fees of such attorneys and such other expenses so incurred.

Section 10.5 Agency's Right to Perform and Expenses. If the Company shall default in the observance or performance of any term or covenant on the Company's part to be observed or performed under or by virtue of any of the terms or provisions the Company Lease Agreement,

this Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Company Documents, the Agency may immediately or at any time thereafter, with or without notice, perform the same for the account of the Company. All expenditures and obligations incurred by Agency for the payment of money in connection with, arising from or incidental to the Company's default, including Agency's performance of the Company's obligations under the Company Lease Agreement, this Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Company Document, or in connection with, arising from or incidental to the filing by or against the Company or any guarantor of this Lease Agreement of a petition in bankruptcy, such sums paid or obligations incurred, including attorneys' fees, whether or not in instituting, prosecuting or defending any action or proceeding, together with interest thereon at the maximum rate permitted by law, shall be deemed to be additional rent hereunder and shall be paid by the Company to Agency within ten (10) days of demand.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under the Company Lease Agreement, this Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Company Document, including the Loan Documents, and that no Event of Default exists under the Company Lease Agreement, this Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Company Document, including any of the Loan Documents.

Section 10.7 Waiver of Trial by Jury, Counterclaim and Right of Redemption. The Company hereby waives any and all rights to (a) to a trial by jury of any dispute or litigation, (b) to assert any counterclaim in any action or proceeding, arising under or in connection with this Lease Agreement (this shall not, however, be construed as a waiver of the Company's right to assert such claims in any separate action or proceeding brought by the Company, and (c) any and all rights of redemption granted by any current or future law.

Section 10.8 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.

ARTICLE XI  
EARLY TERMINATION OF THE LEASE AGREEMENT:  
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of the Lease Agreement.

(a) If any of the following events shall occur, the Company shall have the option, at any time, to purchase the Company Facility and terminate this Lease Agreement upon compliance with the requirements set forth this Lease Agreement:

(i) The Company Facility shall have been damaged or destroyed to such extent that, in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Agency within sixty (60) days after such damage or destruction), (a) the Company Facility cannot reasonably be



restored within a period of six (6) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, (b) the Company is thereby prevented from carrying on its normal operations within the Company Facility for a period of six (6) consecutive months after such damage or destruction or (c) the cost of restoration of the Company Facility would exceed the Net Proceeds of insurance carried thereon, plus the amount for which the Company is self insured as the result of permitted deductible amounts under Sections 6.4 and 6.5 of this Lease Agreement;

(ii) Title to, or the use of, all or any part of the Company Facility shall have been taken by Condemnation so that in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Agency and the Bank within sixty (60) days after the date of such taking), the Company is thereby prevented from carrying on its normal operations therein for a period of six (6) consecutive months after such taking; or

(iii) As a result of changes in the Constitution of the State or the Constitution of the United States of America or of legislative or administrative action (whether Federal, state or local) or by final decree, judgment or order of any court or administrative body (whether Federal, state or local) entered after the Company's contest thereof in good faith, this Lease Agreement, in the opinion of an Authorized Representative of the Company expressed in a certificate filed with the Agency and the Bank within sixty (60) days after the happening of the event, becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties or imposes material additional burdens or liabilities on the Company.

(b) The Company shall have the additional option at any time to terminate this Lease Agreement upon filing with the Agency and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(b) and upon compliance with the requirements set forth in this Lease Agreement.

Section 11.2 Conditions to Termination of the Lease Agreement. In the event of the expiration or termination of this Lease Agreement in accordance with the provisions of Section 5.3, 10.2 or 11.1 hereof, the Company shall pay, or cause to be paid to the Agency, or as the Agency may direct,

(a) all unpaid charges, fees and expenses of the Agency incurred under the Company Lease Agreement, this Lease Agreement, the Equipment Lease Agreement, or the Agency Compliance and Guaranty Agreement;

(b) all amounts due and unpaid under Section 5.1 hereof through the date on which this Lease Agreement expires or terminates or the conveyance hereunder, whichever is later;

(c) all amounts due and unpaid under Section 5.4 hereof;

(d) the purchase price for the Company Equipment in the amount of \$1.00; and

(e) an amount deemed sufficient by the Agency 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 Purchase. At the closing of any termination of the Lease Agreement (or purchase of the Agency's leasehold interest in the Company Facility) pursuant to this Article XI, at the sole cost and expense of the Company, the Agency shall, upon receipt of the purchase price, and such other fees, charges and other amounts as shall be due the Agency, and the Company shall, execute and deliver such documents satisfactory to the Agency to terminate this Lease Agreement and the Company Lease Agreement and to convey the Facility Equipment to the Company, subject only to the following: (i) any Liens to which title to such Property were subject when conveyed to the Agency, (ii) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (iii) any Permitted Encumbrances and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default, and (b) 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 (excluding, however, any rights of indemnification or defense thereunder) or Condemnation award with respect to the Company Facility.

Section 11.4 Closing. The Closing of the transactions contemplated under this Article XI shall take place at the office of the Agency or such other place as the Agency may specify, on such date and at such time as the Agency shall direct, by notice to that effect, provided that the Agency shall endeavor to fix the place, date and time of closing hereunder so as to occur not less than ten (10) days nor more than forty five (45) days after the occurrence of the event giving rise thereto.

## ARTICLE XII MISCELLANEOUS

### Section 12.1 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 Lease Agreement, the Company Lease Agreement or any other Company Document or any matter arising out of or in connection with this Lease Agreement, the Company Lease Agreement or any other Company Document, or the Company'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 Lease Agreement of Company Lease Agreement or any claim arising out of or in connection with this Lease Agreement or the Company Lease Agreement or the Company'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, Chief Executive Officer, 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's Chief Executive Officer, any 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 12.2 Notices. All notices and other communications required or permitted to be given pursuant to this Lease Agreement or the Company Lease Agreement shall be in writing and shall be deemed to have been given, if delivered by hand with acknowledgement of receipt therefor, on the day of delivery, or if mailed by registered or certified mail, return receipt requested, postage prepaid, on the third business day after mailing, or if sent by recognized national overnight courier for next business day delivery for the account of the sender, on the next business day following the deposit of such notice into the custody of the overnight courier, to the parties at the following addresses:

To the Agency:  
Town of Brookhaven Industrial Development Agency  
1 Independence Hill  
Farmingville, New York 11738  
Attn: Chief Executive Officer

To the Company:  
Jones Ventures, LLC  
22 Old Dock Road  
Yaphank, NY 11980

To the Bank:  
Citibank, N.A.  
6801 Colwell Blvd.  
Mail Stop NTSB 2400  
Irving, TX 75039

A duplicate copy of each notice, certificate and other written communication given hereunder by either the Agency or the Company shall also be given to the Bank. The Agency and the Company may, by notice given hereunder, designate in writing any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 12.3 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.4 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.5 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in writing and in accordance with

the provisions of this Lease Agreement. Any waiver of the provisions hereof shall be in writing and executed by each party hereto.

Section 12.6 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.7 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State. Any actions, suits or proceedings arising under or by virtue of this Lease 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 Lease Agreement.

Section 12.8 Recording and Filing.

(a) This Lease Agreement (or a memorandum thereof), may be recorded by the Agency or the Company in the Office of the Clerk of Suffolk County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

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

(c) The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Lease Agreement.

Section 12.9 Survival of Obligations. The obligations of the Company to or for the benefit of the Agency shall survive any termination or expiration of this Lease Agreement or the Company Lease Agreement.

Section 12.10 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

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





EXHIBIT A

METES AND BOUNDS DESCRIPTION

ALL that certain plot piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk, State of New York, known and designated as part of Lot 2 as shown on a certain map entitled, "Map of Sills Industrial Park, Section One" and filed in the Office of the Clerk of Suffolk County on July 31, 1984 as Map Number 7762, and being more particularly bounded and described as follows:

BEGINNING at a point on the Northerly side of Industry Court, at the Westerly end of a curve connecting the Northerly side of Industry Court with the Westerly side of Oak Dock Road (Todd Boulevard);

RUNNING THENCE North 82 degrees 03 minutes 21 seconds West along the Northerly side of Industry Court 91.38 feet to a point of curvature;

THENCE still along the Northerly side of Industry Court along a curve bearing to the right having a radius of 267.56 feet for the arc length of 244.72 feet to land now or formerly of RPG Sills Road Corp.

THENCE North 7 degrees 57 minutes 09 seconds East along last said land 97.31 feet to a point;

THENCE South 82 degrees 02 minutes 51 seconds East a distance of 328.37 feet to the Westerly side of Old Dock Road;

THENCE South 7 degrees 56 minutes 39 seconds West along the Westerly side of Old Dock Road 176.60 feet to the Northerly end of a curve connecting the Westerly side of Old Dock Road with the Northerly side of Industry Court;

THENCE along last said curve, bearing to the right, having a radius of 25.00 feet for the arc length of 39.27 feet to the Northerly side of Industry Court and the point or place of BEGINNING.

EXHIBIT B

FACILITY EQUIPMENT

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, and not part of the Equipment described in Exhibit B to the Equipment Lease Agreement, in connection with the completion of the Town of Brookhaven Industrial Development Agency's JONES VENTURES, LLC / UI SUPPLIES, INC. Facility located at 22 Old Dock Road, Yaphank, Suffolk County, New York.



## EXHIBIT C

### 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 the Town of Brookhaven.

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 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, renovate, demolish, 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, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction, renovation 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 construction, renovation and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing, renovating 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, demolition, construction, renovation 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.

EXHIBIT D

PILOT SCHEDULE

Payments-In-Lieu-of-Taxes: 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), Longwood School District, Suffolk County and Appropriate Special Districts

Year	PILOT Amount
2017/2018	\$17,413.00
2018/2019	\$17,413.00
2019/2020	\$17,761.00
2020/2021	\$18,116.00
2021/2022	\$18,478.00
2022/2023	\$18,848.00
2023/2024	\$19,225.00
2024/2025	\$19,609.00
2025/2026	\$20,002.00
2026/2027	\$20,402.00

Thereafter, 100% of all taxes and assessments, including 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 for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

EXHIBIT E

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: OCTOBER 31, 2017

ELIGIBLE LOCATION:

[22 Old Dock Road, Yaphank, Suffolk County, New York]  
\_\_\_\_\_, 201\_

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency  
(Jones Ventures, LLC / UI Supplies, Inc. Facility)

Ladies and Gentlemen:

The Town of Brookhaven Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease Agreement, dated as of October 1, 2016 (the "Lease Agreement"), between the Agency and JONES VENTURES, LLC, a limited liability company organized and existing under the laws of the State of New York, having an address of 22 Old Dock Road, Yaphank, New York 11980 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Company Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed [*insert name of Agent*] (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Schedule A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in

connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Company Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Company Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Company Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its contract copies of (a) its contract with the Company to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Company Facility) a written statement of all sales and use tax exemptions claimed by such Agent

for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as Schedule B. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Company Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Company Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. **Special Provisions Relating to State Sales Tax Savings.**

a. The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Lease Agreement and the Special Provisions, the Special Provisions shall control.

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

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent

(12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earliest of (i) the Expiration Date referred to above, (ii) the expiration or termination of the Lease Agreement, (iii) completion of the initial acquisition, construction and equipping of the Company Facility, (iv) the Maximum Company Sales Tax Savings Amount has been received or realized on account of the Company Facility, and (v) notice from the Agency or the Company of termination of the Sales Tax Exemption. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

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

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Lisa MG Mulligan, Chief Executive Officer

ACCEPTED AND AGREED TO BY:

\_\_\_\_\_ [AGENT] \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## SCHEDULE A

to

### SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;

- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (ix) maintenance of the type as shall constitute janitorial services.



EXHIBIT F

SALES TAX REGISTRY

Please Complete:      REPORTED PERIOD: ANNUAL PERIOD FROM  
 JULY 1, 201\_\_ to JUNE 30, 201\_\_

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [ ] to DECEMBER 31, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [ ] to DECEMBER 31, [ ]:</b>						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [ ] to JUNE 30, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [ ] to JUNE 30, [ ]:</b>						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:</b>						

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Brookhaven Industrial Development Agency ("TOBRIDA"). This form and information provided pursuant hereto may be disclosed by TOBRIDA in connection with the administration of the programs by TOBRIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

**Lessee Name:** \_\_\_\_\_  
**Signature By:** \_\_\_\_\_  
**Name (print):** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_