

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

and

INTERCOUNTY ASSOCIATES II LLC

and

INTERCOUNTY APPLIANCE CORP.

and

10 NATIONAL MEDFORD LLC

ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

Dated December 13, 2018

Town of Brookhaven Industrial Development Agency
(Assignment of Intercounty Associates II LLC/Intercounty Appliance Corp. Facility)

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ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT, dated as of December 13, 2018 (this “**Assignment, Assumption and Amendment Agreement**”), is by and among the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Issuer**”), INTERCOUNTY ASSOCIATES II LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 10 National Boulevard, Medford, New York 11763 (the “**Assignor**” and, before the Effective Date, the “**Company**”), 10 NATIONAL MEDFORD LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having an office at Seven Penn Plaza, Suite 1100, New York, New York 10001 (the “**Assignee**” and, on and after the Effective Date, the “**Company**”), and INTERCOUNTY APPLIANCE CORP., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 10 National Boulevard, Medford, New York 11763 (the “**Lessee**”).

R E C I T A L

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

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

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

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State of New York, as amended (collectively, the “**Act**”), the Issuer was created and is empowered to undertake the providing of financing and leasing of the Facility defined below;

WHEREAS, the Issuer has previously provided its assistance to the Assignor and the Lessee, by issuing its (i) \$9,000,000 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the “**Series 2005 Bonds**”), which Series 2005 Bonds were used to finance certain costs of an industrial development facility consisting of the acquisition of an approximately

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

WHEREAS, the Issuer sold the Original Facility to the Assignor pursuant to and in accordance with the terms of a certain Installment Sale Agreement, dated as of January 1, 2005 (the “**2005 Installment Sale Agreement**”), by and between the Issuer and the Assignor, a memorandum of which 2005 Installment Sale Agreement was recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Assignor leased the Original Facility to the Lessee pursuant to a Lease Agreement, dated January 26, 2005 (the “**Original Lease Agreement**”), by and between the Assignor and the Lessee, a memorandum of which Original Lease Agreement was recorded in the Suffolk County Clerk’s office; and

WHEREAS, in connection therewith, the Issuer and the Lessee entered into an Agency Compliance Agreement, dated as of January 1, 2005 (the “**2005 Agency Compliance Agreement**”); and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Issuer, the Assignor and the Lessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of January 1, 2005 (the “**2005 PILOT Agreement**”), whereby the Assignor and the Lessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility; and

WHEREAS, in connection with the acquisition, construction and equipping of the Original Facility, the Issuer, The Bank of New York Mellon, as Trustee (the “**Trustee**”), Capital One, National Association (the “**LOC Bank**”), the Assignor and the Lessee entered into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2005 (the “**2005 Environmental Compliance and Indemnification Agreement**”), whereby the Assignor and the Lessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, in connection with the issuance and sale of the Series 2013 Bonds, the 2005 Installment Sale Agreement was amended pursuant to a First Amendment to Installment Sale Agreement, dated as of September 1, 2013 (the “**First Amendment to Installment Sale Agreement**”; and together with the 2005 Installment Sale Agreement, the “**Original Installment Sale Agreement**”), by and between the Issuer and the Assignor, a memorandum of which First Amendment to Installment Sale Agreement was recorded in the Suffolk County Clerk’s office; and

WHEREAS, the Original Lease Agreement was amended to reflect the leasing of the Facility by the Assignor to the Lessee pursuant to a certain First Amendment of Lease Agreement, dated September 26, 2013 (the “**First Amendment to Lease**”; and together with the Original Lease Agreement, the “**Lease Agreement**”), by and between the Assignor and the Lessee; and

WHEREAS, the 2005 Agency Compliance Agreement was amended and restated pursuant to an Amended and Restated Agency Compliance Agreement, dated as of September 1, 2013 (the “**Amended and Restated Agency Compliance Agreement**”; and together with the 2005 Agency Compliance Agreement, the “**Original Agency Compliance Agreement**”);

WHEREAS, in connection with the issuance and sale of the Series 2013 Bonds, the Issuer, the Assignor and the Lessee entered into an Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of September 1, 2013 (the “**Amended and Restated PILOT Agreement**”; and together with the 2005 PILOT Agreement, the “**Original PILOT Agreement**”), by and among the Assignor, the Lessee and the Issuer; and

WHEREAS, in connection with the acquisition, construction, renovation and equipping of the Facility, the Issuer, the Assignor, the Lessee, the Trustee and the LOC Bank entered into an Environmental Compliance and Indemnification Agreement, dated as of September 1, 2013 (the “**2013 Environmental Compliance and Indemnification Agreement**”; and together with the 2005 Environmental Compliance and Indemnification Agreement, the “**Original Environmental Compliance and Indemnification Agreement**”), by and among the Issuer, the Assignor, the Lessee, the LOC Bank and the Trustee; and

WHEREAS, the Issuer, the Assignor and the Lessee entered into a certain Recapture Agreement, dated as of September 1, 2013 (the “**Original Recapture Agreement**”), pursuant to which the Issuer has the right to recapture certain economic benefits and assistance granted to the Assignor and the Lessee upon the terms and conditions set forth in the Original Recapture Agreement, which Original Recapture Agreement was recorded in the Suffolk County Clerk’s office; and

WHEREAS, as of the date of this Assignment, Assumption and Amendment Agreement, the Bonds are deemed paid in full and will be redeemed in accordance with the terms of the Indenture of Trust, dated as of January 1, 2005, as amended and supplemented pursuant to a First Supplemental Indenture of Trust, dated as of September 1, 2013;

WHEREAS, the Assignee has now requested the Issuer’s consent to (i) the assignment by the Assignor of all of its rights, title, interest and obligations under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement, the Original Recapture Agreement, and certain other agreements in connection with the Facility to and the assumption by the Assignee of all of such rights, title, interest and obligations of the Assignor, (ii) the continued subleasing of the Facility to the Lessee, and (iii) the release of the Assignor from any further liability with respect to the Facility and the release of the Lessee from liability under the original transaction documents, in each case subject to certain

requirements of the Issuer, all pursuant to this Assignment, Assumption and Amendment Agreement; and

WHEREAS, pursuant to this Assignment, Assumption and Amendment Agreement the Original Installment Sale Agreement, shall be amended to reflect that the Assignee will assume all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date (as hereinafter defined) with respect to the Facility under the Installment Sale Agreement (as amended by this Assignment, Assumption and Amendment Agreement, the “**Installment Sale Agreement**”) including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, the Original Environmental Compliance and Indemnification Agreement shall be amended pursuant to and in accordance with this Assignment, Assumption and Amendment Agreement, and the Assignee will assume all of the right, title, interest, liability, duty and obligations of the Assignor and the Lessee arising on and after the Effective Date under the Original Environmental Compliance and Indemnification Agreement (as amended by this Assignment, Assumption and Amendment Agreement, the “**Environmental Compliance and Indemnification Agreement**”), with respect to the Facility, including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, the Original PILOT Agreement shall be amended pursuant to and in accordance with a separate Second Amended and Restated Payment-In-Lieu-Of-Tax Agreement, dated as of December 1, 2018 (the “**Second Amended and Restated PILOT Agreement**”), and the Assignee will assume all of the right, title, interest, liability, duty and obligations of the Assignor and the Lessee arising on and after the Effective Date under the Original PILOT Agreement (as assigned by this Assignment, Assumption and Amendment Agreement and amended by the Second Amended and Restated PILOT Agreement, the “**PILOT Agreement**”) with respect to the Facility, including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, the Original Recapture Agreement shall be amended pursuant to and in accordance with a separate Amended and Restated Recapture Agreement, dated as of December 1, 2018 (the “**Amended and Restated Recapture Agreement**”), and the Assignee will assume all of the right, title, interest, liability, duty and obligations of the Assignor and the Lessee arising on and after the Effective Date under the Original Recapture Agreement (as assigned by this Assignment, Assumption and Amendment Agreement and amended by the Amended and Restated Recapture Agreement, the “**Recapture Agreement**”), with respect to the Facility, including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, the Original Agency Compliance Agreement shall be amended pursuant to and in accordance with a separate Second Amended and Restated Agency Compliance

Agreement, dated as of December 1, 2018 (the “**Second Amended and Restated Agency Compliance Agreement**”); and

WHEREAS, subject to the Issuer’s consent, which consent is given pursuant to Section 3.2 hereof, the Assignee shall assume the Assignor’s leasehold estate and reversionary interest in the Facility created pursuant to the Original Installment Sale Agreement, and assume all of the right, title, interest, liability, duty and obligations of the Assignor with respect to the Facility including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement, and the Original Environmental Compliance and Indemnification Agreement, in each case, arising on and after the Effective Date; and

WHEREAS, the Assignee has agreed to indemnify the Issuer against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the assignment of the interest in the Facility from the Assignor to the Assignee, the financing of the Facility and the subsequent sale of the Facility to the Assignee.

AGREEMENT

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

ARTICLE I DEFINITIONS

All capitalized terms used in this Assignment, Assumption and Amendment Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A and made a part hereof.

All references in the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Recapture Agreement, or the Installment Sale Agreement to “this Environmental Compliance and Indemnification Agreement” or “this PILOT Agreement” or “the PILOT Agreement”, “this Recapture Agreement” or “the Recapture Agreement”, “this Installment Sale Agreement” or “the Installment Sale Agreement”, or words of similar import, and the terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder”, “thereby”, “thereof”, “thereto”, “therein”, “thereunder” and any similar terms as used in any such instrument or agreement shall be deemed to refer to such instrument or agreement as amended, modified, supplemented and assigned by this Assignment, Assumption and Amendment Agreement, the Amended and Restated PILOT Agreement and the Amended and Restated Recapture Agreement.

ARTICLE II REPRESENTATIONS AND COVENANTS OF ASSIGNOR AND ASSIGNEE

Section 2.1 Representation and Covenants of Assignor.

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

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

Section 2.2 Representation and Covenants of Assignee.

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

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

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

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

ARTICLE III
ASSIGNMENT, ASSUMPTION AND AMENDMENT

Section 3.1 Effective Date, Assignment, Assumption and Amendment, Issuer Certification, Consents.

(a) As used herein, the “Effective Date” shall mean December 13, 2018.

(b) Upon the Effective Date the Assignor hereby assigns to the Assignee all of its rights, title, interest, obligations, liabilities and duties (including its reversionary rights under the Original Installment Sale Agreement) under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement and the Original Environmental Compliance and Indemnification Agreement (provided that with respect to any obligations, liabilities and duties, such assignment shall relate only to obligations, liabilities and duties arising on or after the Effective Date).

(c) On and after the Effective Date the Assignee hereby assumes all of the Assignor’s rights, title, interest, obligations, liabilities and duties relating to the Facility arising on and after the Effective Date, including, but not limited to, all of its rights, title, interest, obligations, liabilities and duties (provided that with respect to any obligations, liabilities and duties, such assumption shall relate only to obligations, liabilities and duties arising on or after the Effective Date) under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement and the Original Environmental Compliance and Indemnification Agreement.

Section 3.2 Consent by Issuer. The Issuer hereby consents to the assignment by the Assignor to the Assignee pursuant to Section 3.1(b) above and the assumption by the Assignee pursuant to Section 3.1(c) above, and otherwise subject to the terms, conditions and limitations described herein.

Section 3.3 Certification of Issuer. The Issuer hereby certifies to Assignee that to the best of its knowledge, the Assignor is not in default under the Issuer Documents, and that there are no unpaid but due sums by Assignor under the Issuer Documents.

ARTICLE IV
RELEASE

Section 4.1 Release of the Assignor and Lessee by the Issuer.

(a) On and after the Effective Date, but only upon receipt of an opinion of counsel to the Assignee that this Assignment, Assumption and Amendment Agreement is duly authorized, executed and delivered by the Assignee, the receipt of which is hereby confirmed, the Issuer hereby releases the Assignor from all of its obligations, liabilities and duties relating to the Facility, including, but not limited to, all of its rights, title, interest, obligation, liabilities and duties under the Installment Sale Agreement, the PILOT Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement.

(b) On and after the Effective Date, but only upon receipt of an opinion of counsel to the Assignee that this Assignment, Assumption and Amendment Agreement is duly authorized, executed and delivered by the Assignee, the receipt of which is hereby confirmed, the Issuer hereby releases the Lessee from all of its obligations, liabilities and duties relating to the Facility, including, but not limited to, all of its rights, title, interest, obligation, liabilities and duties under the PILOT Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement.

(c) Notwithstanding anything herein to the contrary, Assignor and Lessee are hereby not released from their respective obligations, liabilities or duties under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement and the Original Environmental Compliance and Indemnification Agreement arising prior to the Effective Date (the “**Prior Obligations**”), including, without limiting the generality of the foregoing, the obligations of the Assignor and the Lessee to indemnify and defend the Issuer and to hold harmless the Issuer under the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement and the Original Environmental Compliance and Indemnification Agreement, irrespective of whether a particular cause of action in connection with such Prior Obligations was commenced or commences before or after the Effective Date.

ARTICLE V INDEMNIFICATION

Section 5.1 Assignee’s Indemnification of Issuer and Assignor. The Assignee shall and does indemnify the Issuer and the Assignor against, and agrees to defend and hold the Issuer and the Assignor harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the Installment Sale Agreement, the PILOT Agreement, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement, first arising on and after to the Effective Date except Prior Obligations. In addition, the Assignee shall and does indemnify the Issuer, and agrees to defend and hold the Issuer harmless from any applicable insurance coverage obligations involving self-insured retentions per occurrence and self-insured retentions in the aggregate incurred in connection with the Facility or any of the Assignee’s obligations to indemnify and hold harmless the Issuer under Section 8.2 of the Installment Sale Agreement, first arising on and after to the Effective Date except Prior Obligations

Section 5.2 Assignor’s and Lessee’s Indemnification of Issuer. The Assignor and the Lessee shall and does indemnify the Issuer and the Assignee against, and agrees to defend and hold the Issuer and the Assignee harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the Original Installment Sale Agreement, the Original PILOT Agreement, the Original Recapture Agreement and the Original Environmental Compliance and Indemnification Agreement, arising prior to the Effective Date, in addition to any other Prior Obligations.

ARTICLE VI
AMENDMENT AND MODIFICATION

Section 6.1 Amendment and Modification of Installment Sale Agreement. The Assignee and the Issuer agree that the Installment Sale Agreement is amended and modified as of the Effective Date as follows:

(a) The Installment Sale Agreement is hereby amended and modified in all respects to reflect that the Bonds have been redeemed and paid in full by the Company in accordance with the terms thereof and of the Indenture. All references to the Bonds, to the payment or security therefor, and to the Indenture, the Mortgage, the Pledge and Assignment, the Guaranty, the Reimbursement Agreement, the Letter of Credit, the Trustee, the LOC Bank or the Owners shall be of no force and effect.

(b) The Installment Sale Agreement is hereby amended and modified in all respects to reflect that the Issuer is now selling the Facility to the Assignee as defined herein. Accordingly, all references in the Installment Sale Agreement to the “Company” are hereby amended and modified to reflect the following definition:

“Company” means 10 National Medford LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns.

(c) Section 1.1 of the Installment Sale Agreement is hereby amended and restated in its entirety to read as follows:

“Section 1.1 Definitions. All capitalized terms used in this Installment Sale Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to this Installment Sale Agreement.”

(d) Section 2.2 of the Installment Sale Agreement is hereby amended and modified to include a new subsection (g) at the end thereof. Such subsection (g) shall read as follows

“(g) Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.”

(e) Section 7.1(g) of the Installment Sale Agreement is hereby amended and restated in its entirety to read as follows:

“(g) If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the Company”

(f) Section 7.2(g) of the Installment Sale Agreement is hereby amended and restated in its entirety to read as follows:

“(g) If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the Company”

(g) Section 8.6 of the Installment Sale Agreement is hereby amended and restated in its entirety to read as follows:

“Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance (“**NYSDTF**”) an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the GML. The Company shall submit a copy of such annual statement to the Issuer at the time of filing with NYSDTF. The Company shall also provide the Issuer with the information necessary for the Issuer to comply with Section 874(9) of the GML. Annually, the Company shall provide the Issuer with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Issuer’s financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Issuer to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Issuer Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Issuer. The Company shall cause any and all sublessees at the Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee to enter into a Tenant Agency Compliance Agreement.”

(h) Article VIII of the Installment Sale Agreement is hereby amended and modified to include a new Section 8.13 at the end thereof. Such Section 8.13 shall read as follows:

“Section 8.13 Employment at the Facility. The Company covenants at all times to maintain or cause to be maintained at the Facility seventy-two (72) FTE employees as of December 31, 2018, and thereafter throughout the Sale Term calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the

Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Company Facility (including the full time equivalent employees of all tenants at the Facility) (“FTE”). It is further provided that the Company may not actually provide the FTEs at the Facility, but rather shall sublease the Facility to the Lessee, and the FTE jobs created and maintained by the Lessee at the Facility shall satisfy the requirement above. The Company’s obligation with regard to creating or causing to be maintained FTEs includes (a) using all reasonable efforts to lease up the Facility, and (b) including provisions in all subleases requiring any tenant to comply with the provisions of the Installment Sale Agreement applicable to them”

(i) Article VIII of the Installment Sale Agreement is hereby amended and modified to include a new Section 8.14 at the end thereof. Such Section 8.14 shall read as follows

“Section 8.14 Compliance with the Act. The Company hereby agrees that the tax abatements provided pursuant to the Act are subject to termination and recapture of benefits pursuant to the provisions of the Recapture Agreement.”

(j) Section 12.1 of the Installment Sale Agreement is hereby amended and restated in its entirety to read as set forth in Section 7.1 hereof.

(k) The Installment Sale Agreement is hereby amended and modified to remove therefrom Sections 1.2; 2.2(d); 2.3; 4.2; 4.3; 5.3(a), (e) and (f); 5.5; 5.7; 5.8; 5.9; 5.10; 5.11; 6.3(c); 9.4; 10.1(a)(viii); 10.2(c) and (f); 11.2(a). Such sections and/or subsections shall be marked as “Reserved” and any references to such sections and/or subsections in the Installment Sale Agreement shall be of no force and effect.

(f) In accordance with the GML, the Installment Sale Agreement is hereby amended and modified to add an Exhibit C thereto. The Second Amended and Restated PILOT Agreement shall be attached to said Exhibit C and shall be incorporated therein.

(g) The Installment Sale Agreement is hereby amended and modified to add the Schedule of Definitions set forth as Schedule A hereto as Schedule A thereof.

Section 6.2 Amendment and Modification of PILOT Agreement. The Assignee and the Issuer agree that the PILOT Agreement shall be amended and modified as of the Effective Date pursuant to a separate Second Amended and Restated PILOT Agreement to be dated as of even date hereof.

Section 6.3 Amendment and Modification of Recapture Agreement. The Assignee and the Issuer agree that the Recapture Agreement shall be amended and modified as of the Effective Date pursuant to a separate Amended and Restated Recapture Agreement to be dated as of even date hereof.

Section 6.4 Amendment and Modification of Environmental Compliance and Indemnification Agreement. The Assignee and the Issuer agree that the Environmental Compliance and Indemnification Agreement is amended and modified as of the Effective Date as follows:

(a) The Environmental Compliance and Indemnification Agreement is hereby amended and modified in all respects to reflect that the Issuer is now selling the Facility to the Assignee as defined herein. Accordingly, all references in the Environmental Compliance and Indemnification Agreement to the “Company” are hereby amended and modified to reflect the following definition:

“Company” means 10 National Medford LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns.

(b) Any notices required to be delivered to the Company pursuant to the terms of the Environmental Compliance and Indemnification Agreement shall be delivered as provided in Section 7.1 hereof.

(c) The Environmental Compliance and Indemnification Agreement is hereby amended and modified in all respects to remove the Trustee, the LOC Bank and the Lessee as parties thereto.

Section 6.5 Amendment and Modification of Agency Compliance Agreement. The Lessee and the Issuer agree that the Agency Compliance Agreement shall be amended and modified as of the Effective Date pursuant to a separate Second Amended and Restated Agency Compliance Agreement to be dated as of even date hereof.

ARTICLE VII MISCELLANEOUS

Section 7.1 Notices. All notices, certificates and other communications hereunder shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication), addressed as follows or to such other address as any party may specify in writing to the others:

To the Issuer:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

To the Assignee:

10 National Medford LLC
Seven Penn Plaza, Suite 1100
New York, New York
Attention: Brian Palumbo, Esq.

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

Section 7.2 Binding Effect. This Assignment, Assumption and Amendment Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 7.3 Severability. In the event any provision of this Assignment, Assumption and Amendment 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 7.4 Amendments, Changes and Modifications. This Assignment, Assumption and Amendment Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 7.5 Execution of Counterparts. This Assignment, Assumption and Amendment 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 7.6 Applicable Law. This Assignment, Assumption and Amendment Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 7.7 Section Headings Not Controlling. The headings of the several Sections in this Assignment, Assumption and Amendment Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Assignment, Assumption and Amendment Agreement.

Section 7.8 Ratification of Documents. Except as otherwise amended and modified by this Assignment, Assumption and Amendment Agreement, the Installment Sale Agreement and the Environmental Compliance and Indemnification Agreement described herein are hereby ratified and confirmed and remain in full force and effect.

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

IN WITNESS WHEREOF, the Issuer, the Assignor, the Lessee and the Assignee have caused this Assignment, Assumption and Amendment Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

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

INTERCOUNTY ASSOCIATES II LLC

By: _____
Name: Charles Gerhard, III
Title: Executive Manager

INTERCOUNTY APPLIANCE CORP.

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

**10 NATIONAL MEDFORD LLC, a
Delaware limited liability company**

By: Feil Properties, LLC, a Delaware limited liability company, its Managing Member

By: _____
Name: Jeffery J. Feil
Title: President

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Title: Chief Executive Officer

INTERCOUNTY ASSOCIATES II LLC

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Name: Charles Gerhard, III
Title: Executive Manager

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Title: President

SCHEDULE A
SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended together with Chapter 358 of the Laws of 1970 of the State, as amended.

“Act of Bankruptcy”, when used with respect to any Person, means the filing of a petition in bankruptcy, or the commencement of another bankruptcy or similar proceeding, by or against such Person under any applicable bankruptcy, insolvency or similar law now or hereafter in effect.

“Agency Compliance Agreement” means the Second Amended and Restated Agency Compliance Agreement, dated as of December 1, 2018, between the Lessee and the Issuer.

“Assignee Documents” means the Assignment, Assumption and Amendment Agreement, the Installment Sale Agreement, the PILOT Agreement, the Recapture Agreement and the Lease Agreement.

“Assignment, Assumption and Amendment Agreement” means the Assignment, Assumption and Amendment Agreement, dated December 13, 2018, by and among the Issuer, the Company, the Original Company and the Lessee.

“Assignor Documents” means the Assignment, Assumption and Amendment Agreement.

“Authorized Representative” means, in the case of the Issuer, the Chairman, the Vice Chairman, the Executive Director, the Chief Executive Officer, the Secretary or the Assistant Secretary of the Issuer; in the case of the Company, any Manager of the Company; in the case of the Lessee the President, Vice President or Secretary and, in the case of each of them, such additional persons as, at the time, are designated to act on behalf of the Issuer, the Company or the Lessee, as the case may be, by written certificate furnished to the Issuer, the Company or the Lessee, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman, the Executive Director, the Chief Executive Officer, the Secretary or the Assistant Secretary of the Issuer, (ii) the Company by any Manger of the Company, or (iii) the Lessee by the President, Vice President, or Secretary.

“Bankruptcy Code” means the United States Bankruptcy Code, as amended from time to time.

“Bill of Sale” means the Bill of Sale, dated January 26, 2005, given by the Original Company to the Issuer, and the Bill of Sale, dated as of September 1, 2013, given by the Original Company to the Issuer, each with respect to the Equipment.

“Bond Documents” means the Installment Sale Agreement, the PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement, and the Agency Compliance Agreement.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“Closing Date” means (i) January 26, 2005, the date of sale and delivery of the Series 2005 Bonds, (ii) September 26, 2013, the date of the initial issuance and delivery of the Series 2013 Bonds, and (iii) December 13, 2018, the date of delivery of the Assignment, Assumption and Amendment Agreement.

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

“Company” means 10 National Medford LLC, a limited liability company, organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having an office at Seven Penn Plaza, Suite 1100, New York, New York 10001.

“Company Documents” means the Bill of Sale, the Deed, the Installment Sale Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, and the Lease Agreement.

“Completion Date” means the date certified by the Company pursuant to Section 4.4 of the Installment Sale Agreement as the date that the Company has completed the renovation and equipping of the Facility.

“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 the period beginning on the date of commencement of the acquisition, renovation and equipping of the Facility, which date shall not be prior to September 20, 2004, and (ii) ending on the Completion Date with respect to the Facility.

“Deed” means the Deed, dated the Closing Date, from the Company to the Issuer.

“Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of September 1, 2013, as assigned and amended by the Assignment, Assumption and Amendment Agreement, by and among the Issuer and the Company.

“Equipment” means all machinery, equipment, furniture, fixtures and other personal property used and to be used in connection with the Facility and financed in whole or in part with Bond Proceeds.

“Event of Default” means any of the events defined as Events of Default by Section 10.1 of the Installment Sale Agreement.

“Facility” means the Facility as defined in the Indenture and sold to the Company under the Installment Sale Agreement.

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

“Improvements” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, (ii) financed in whole or in part with Bond Proceeds or otherwise required to be paid for by the Company pursuant to the Installment Sale Agreement, and (iii) not part of the Equipment, all as they may exist from time to time.

“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 Issuer, the Company.

“Installment Sale Agreement” means the Installment Sale Agreement, dated as of January 1, 2005, as amended by the First Amendment to Installment Sale Amendment, dated as of September 1, 2013, and as further assigned and amended by the Assignment, Assumption and Amendment Agreement, as the same may be further amended from time to time.

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

“Issuer Documents” means the the Installment Sale Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Agency Compliance Agreement and the Recapture Agreement.

“Land” means the real estate sold by the Issuer to the Company pursuant to the Installment Sale Agreement and more particularly described in Exhibit A attached thereto.

“Lease” means the Lease, dated as of December 13, 2018, between the Company and the Lessee.

“Lessee” means Intercounty Appliance Corp., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 360 Moreland Road, Commack, New York 11725.

“Lessee Documents” means the Agency Compliance Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, and the Lease Agreement.

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

“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.

“Original Company” means Intercounty Associates II LLC, a limited liability company, organized and existing under the laws of the State of New York, having an office at 360 Moreland Road, Commack, New York 11725.

“PILOT Agreement” means the Second Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of December 1, 2018, by and between the Company and the Issuer, as amended from time to time.

“Permitted Encumbrances” means (i) exceptions to title set forth in the Title Report (ii) the Installment Sale 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, and (iv) Liens for taxes not yet delinquent.

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

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

“Public Purposes” means the State’s objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease,

improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Recapture Agreement” means the Amended and Restated Recapture Agreement, dated as of December 1, 2018, by and between the Issuer and the Lessee.

“Sale Term” means the duration of the sale term created in the Installment Sale Agreement as specified in Section 5.2 of the Installment Sale Agreement.

“Schedule of Definitions” means the words and terms set forth in this Schedule of Definitions attached to the Indenture 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.

“Title Report” means Certificate of Title No. ECA47370 issued by East Coast Abstract Inc. as agent for Stewart Title Insurance Company to the Issuer on September 17, 2018, and redated and recertified on the Closing Date.

“Unassigned Rights” means the rights of the Issuer and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.2, 8.6, 8.8, 10.2(a)(iii) and (a)(vi), 10.4(a) and 11.2(b) and (d) of the Installment Sale Agreement.