

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

CV VILLAGE AT CORAM, LLC

PHASE I FACILITY LEASE AGREEMENT

Dated as of February 1, 2014

Town of Brookhaven Industrial Development Agency
(CV Village at Coram, LLC 2014 Facility)

Section 7.4	<u>Waiver of Real Property Law Section 227.</u>	21
<u>ARTICLE VIII SPECIAL COVENANTS</u>		21
Section 8.1	<u>No Warranty of Condition or Suitability by Agency.</u>	21
Section 8.2	<u>Hold Harmless Provisions.</u>	21
Section 8.3	<u>Right to Inspect Phase I Facility.</u>	22
Section 8.4	<u>Company to Maintain Its Existence.</u>	22
Section 8.5	<u>Qualification in State.</u>	22
Section 8.6	<u>Agreement to File Annual Statements and Provide Information.</u>	22
Section 8.7	<u>Books of Record and Account; Financial Statements.</u>	23
Section 8.8	<u>Compliance with Orders, Ordinances, Etc.</u>	23
Section 8.9	<u>Discharge of Liens and Encumbrances.</u>	25
Section 8.10	<u>Identification of Phase I Equipment.</u>	25
Section 8.11	<u>Depreciation Deductions and Investment Tax Credit.</u>	25
Section 8.12	<u>Employment Opportunities; Notice of Jobs.</u>	25
Section 8.13	<u>Employment at the Phase I Facility.</u>	26
Section 8.14	<u>Compliance with the Act</u>	26
<u>ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND</u>		
	<u>SUBLEASING.</u>	26
Section 9.1	<u>Restriction on Sale of Phase I Facility; Release of Certain Land.</u>	26
Section 9.2	<u>Removal of Phase I Equipment.</u>	27
Section 9.3	<u>Assignment and Subleasing.</u>	28
Section 9.4	<u>Mortgage and Pledge of Agency's Interest to Lender</u>	29
Section 9.5	<u>Pledge of Company's Interest to Lender</u>	29
Section 9.6	<u>Merger of Agency.</u>	29
<u>ARTICLE X EVENTS OF DEFAULT AND REMEDIES</u>		30
Section 10.1	<u>Events of Default Defined.</u>	30
Section 10.2	<u>Remedies on Default.</u>	32
Section 10.3	<u>Remedies Cumulative.</u>	34
Section 10.4	<u>Agreement to Pay Attorneys' Fees and Expenses.</u>	34
Section 10.5	<u>No Additional Waiver Implied by One Waiver.</u>	34
Section 10.6	<u>Certificate of No Default.</u>	34
<u>ARTICLE XI EARLY TERMINATION OF LEASE AGREEMENT</u>		34
<u>OPTION IN FAVOR OF COMPANY</u>		34
Section 11.1	<u>Early Termination of Lease Agreement.</u>	35
Section 11.2	<u>Conditions to Early Termination of Lease Agreement.</u>	35
Section 11.3	<u>Obligation to Purchase Phase I Facility.</u>	35
Section 11.4	<u>Conveyance on Purchase.</u>	35
<u>ARTICLE XII MISCELLANEOUS</u>		36
Section 12.1	<u>Notices.</u>	36
Section 12.2	<u>Binding Effect.</u>	38
Section 12.3	<u>Severability.</u>	38

<u>Section 12.4</u>	<u>Amendments, Changes and Modifications</u>	38
<u>Section 12.5</u>	<u>Execution of Counterparts</u>	38
<u>Section 12.6</u>	<u>Applicable Law</u>	38
<u>Section 12.7</u>	<u>List of Additional Phase I Equipment; Further Assurances</u>	38
<u>Section 12.8</u>	<u>Survival of Obligations</u>	38
<u>Section 12.9</u>	<u>References to Lender, Loan, Note, or Mortgage</u>	38
<u>Section 12.10</u>	<u>Mortgage Financing</u>	38
<u>Section 12.11</u>	<u>Table of Contents and Section Headings Not Controlling</u>	39
<u>Section 12.12</u>	<u>Waiver of Trial by Jury</u>	39
EXHIBIT A-1	Legal Description of Phase I Land	
EXHIBIT A-2	Legal Description of Phase II Land	
EXHIBIT A-3	Legal Description of Phase III Land	
EXHIBIT B	Phase I Equipment	
EXHIBIT C	Compliance with Labor Law, Executive Law and Civil Rights Law	
EXHIBIT D	Form of Tenant Agency Compliance Agreement	
EXHIBIT E	Mortgage Requirements	
SCHEDULE A	Schedule of Definitions	

THIS PHASE I FACILITY LEASE AGREEMENT, dated as of February 1, 2014 (this “**Phase I Facility Lease Agreement**”), is by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “**Agency**”), and CV VILLAGE AT CORAM, LLC, a limited liability company, organized and existing under the laws of the State of New York, having an address at 183 E. Main Street, Suite 600, Rochester, New York 14604 (the “**Company**”).

RECITALS

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

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

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

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (as more specifically set forth on Exhibits A-1, A-2, and A-3) (the “**Land**”), together with existing structures and improvements located thereon by the Company and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,020 square feet of commercial space (the “**Phase I Facility**”), which Phase I Facility will be leased to the Company pursuant to this Phase I Facility Lease Agreement, for further sublease by the Company to, and to be developed and used by Wincoram Commons I, LLC, a New York limited liability company (the “**Phase I Sublessee**”); (B) Phase II will consist of the construction and equipping of five (5) buildings totaling approximately 82,000

square feet and containing an aggregate of approximately 78 additional residential units (the “**Phase II Facility**”), which Phase II Facility will be leased to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase II Facility Lease Agreement**”), by and between the Agency and the Company, for further sublease by the Company to, and to be developed and used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “**Phase II Sublessee**”); and (C) Phase III will consist of the construction and equipping of an approximately 6,000 square foot building to be used for retail space (the “**Phase III Facility**”; and together with the Phase I Facility and the Phase II Facility, the “**Facility**”), which Phase III Facility will be leased to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase III Facility Lease Agreement**”), by and between the Agency and the Phase III Company, for further sublease by the Company to, and to be developed and used by Wincoram Commons Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development, including the following as they relate to the appointment of the Company as agent of the Agency with respect to the acquisition, demolition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, demolition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, demolition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A-1 attached hereto (the “**Phase I Land**”) to the Agency pursuant to the terms of a certain Phase I Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase I Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase I Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase I Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-sublease the Phase I Land and lease the Phase I Improvements and the Phase I Equipment to the Company pursuant to this Phase I Facility Lease Agreement;

WHEREAS, the Company has agreed to sublease the Phase I Facility to the Phase I Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase I Facility Sublease**”), by and between the Company and the Phase I Sublessee;

WHEREAS, in connection therewith, the Agency and the Phase I Sublessee have agreed to enter into a Phase I Facility Agency Compliance Agreement, dated as of February 1, 2014 (the “**Phase I Facility Agency Compliance Agreement**”), whereby the Phase I Sublessee will provide certain assurances to the Agency with respect to the Phase I Facility;

WHEREAS, in order to define the Company's and the Phase I Sublessee's obligations regarding payments-in-lieu of taxes, the Agency, the Company and the Phase I Sublessee will enter into a Phase I Facility Payment in Lieu of Tax Agreement, dated as of February 1, 2014 (the "**Phase I Facility PILOT Agreement**"), by and among the Agency, the Company and the Phase I Sublessee; whereby the Company and the Phase I Sublessee agree to make certain payments-in-lieu-of-taxes to the Taxing Authorities (as defined therein);

WHEREAS, the Company and the Phase I Sublessee will enter into a Phase I Facility Recapture Agreement, dated as of February 1, 2014 (the "**Phase I Facility Recapture Agreement**"), from the Company and the Phase I Sublessee to the Agency in order to reflect the repayment of obligations of the Company and the Phase I Sublessee upon the occurrence of a Recapture Event (as defined therein);

WHEREAS, as a condition to an inducement for the Agency to enter into and perform the transactions contemplated by this Phase I Facility Lease Agreement, the Agency will require the Company and the Phase I Sublessee to enter into an Phase I Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014 (the "**Phase I Facility Environmental Compliance and Indemnification Agreement**"), by and between the Company, the Phase I Sublessee and the Agency; and

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

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 Phase I Facility Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a leasehold interest in the Phase I Land and will cause the Phase I Improvements to be constructed and the Phase I Equipment to be acquired and installed and will sublease the Phase I Facility to the Company pursuant to this Phase I Facility Lease Agreement, all for the Public Purposes of the State.

(c) By resolution dated June 19, 2013, 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 Phase I Facility, the Phase I Facility would not have a “significant impact” or “significant effect” on the environment within the meaning of the SEQR Act.

(d) Neither the execution and delivery of any of the Agency 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 Agency 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 the Act, any other law or ordinance of the State or any political subdivision thereof, or of the Agency’s Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency 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 Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

(f) The Agency has been induced to enter into this Phase I Facility Lease Agreement by the undertaking of the Company to utilize the Phase I Facility in the Town of Brookhaven, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purpose of this Phase I Facility Lease Agreement.

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

(a) The Company is a limited liability company, organized and existing under the laws of the State of 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 Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Phase I Facility and the design, acquisition, demolition, construction, equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase I Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(e) The Company will complete or has completed demolition, construction and equipping of the Phase I Facility substantially in accordance with the terms and provisions of the Plans and Specifications.

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

(g) The Company hereby represents to the Agency that the Agency's involvement with the Phase I Facility (i) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State nor an abandonment of one or more plants of the Company located in the State, or (ii)(A) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State, or (B) is reasonably necessary to preserve the competitive position of the Company in its industry.

(h) The Company will sublease and lease the Phase I Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will cause any

future commercial tenant or tenants of portions of the Phase I Facility to execute and deliver to the Agency, a Tenant Agency Compliance Agreement, in the form attached hereto as Exhibit D, prior to the occupancy of the Phase I Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

(i) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Director, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(g) and 9.3 of this Phase I Facility Lease Agreement. Without limiting the generality of the foregoing, the Company will provide the Agency with the information and materials described in Section 8.6 hereof.

ARTICLE III PHASE I FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) leasehold interest in the Phase I Land and the Phase I Improvements, and (ii) lien-free title to the Phase I Equipment, in each case except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to the Phase I Equipment and a leasehold interest in the Phase I Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Company has obtained or will obtain (i) a leasehold title insurance policy for the benefit of the Agency insuring leasehold title to the Phase I Land and the Phase I Improvements, and (ii) if the Phase I Facility is mortgaged by the Agency and the Company to a Lender, a mortgage insurance policy for the benefit of the Lender insuring the Lien of the Mortgage on the Phase I Land and the Phase I Improvements, in each case in an amount as agreed to by the parties, and in each case except for Permitted Encumbrances.

Section 3.3 Subordination of Lease Agreement. This Phase I Facility Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage or Mortgages which may now or hereafter be granted by the Agency and the Company on the Phase I Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof and the Agency and or the Company will deliver to any such lender any such agreements as are necessary to confirm same.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Phase I Facility and the interest therein to be conveyed by this Phase I Facility Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Phase I Facility and the leasehold interests therein are securing the financial obligations of the Company. The Phase I Facility and the leasehold interests therein secure the obligations of the Company to the Agency under the Phase I Facility PILOT Agreement, the Phase I Facility Recapture Agreement, the Phase I Facility Environmental Compliance and Indemnification Agreement and this Phase I Facility Lease Agreement, including the Company's obligation to acquire, demolish,

construct, equip and maintain the Phase I Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency, all to the extent set forth in this Phase I Facility Lease Agreement.

ARTICLE IV
ACQUISITION, DEMOLITION, CONSTRUCTION, RENOVATION AND EQUIPPING
OF PHASE I FACILITY

Section 4.1 Acquisition, Demolition, Construction and Equipping of Phase I Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, demolish, construct and equip the Phase I Facility substantially in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time with the written approval of the Agency and any Lender (if required by such Lender) making a Loan for the financing or refinancing of the acquisition, demolition, construction and equipping of the Phase I Facility, which approval shall not be unreasonably withheld or delayed.

(c) Except as set forth in Section 6.2 hereof, title to or leasehold interest in all materials, equipment, machinery and other items of Property incorporated or installed in the Phase I Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title 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 and the Phase I Sublessee its true and lawful agents, and the Company hereby accepts such agency (i) to acquire, demolish, construct and equip the Phase I Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Phase I Improvements and acquiring and installing the Phase I Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the demolition and construction of the Phase I Improvements and the acquisition and installation of the Phase I Equipment from funds made available therefor in accordance with this Phase I Facility Lease Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the demolition and construction of the Phase I Improvements and the acquisition and installation of the Phase I Equipment, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company and the Phase I Sublessee from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

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

Section 4.2 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition, demolition, construction and equipping of the Phase I Facility or to reimburse the Company for the cost of acquiring, demolishing, constructing, and equipping the Phase I Facility. Proceeds of such Loan or Loans shall be disbursed by such Lender or Lenders in accordance with the provisions of the Mortgage or Mortgages or other related documentation applicable to such Loan or Loans.

Section 4.3 Certificate of Completion. To establish the Completion Date, the Company shall deliver to the Agency, (i) a certificate signed by an Authorized Representative of the Company: (a) stating that the acquisition, demolition, construction and equipping of the Phase I Facility has been completed substantially in accordance with the Plans and Specifications therefor; and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition, demolition, construction and equipping has been made or provided for; and (ii) such certificates as may be reasonably satisfactory to the Agency including, without limitation, a final or temporary certificate of occupancy, as applicable. The Company agrees to endeavor to complete the acquisition, demolition, construction and equipping of the Phase I Facility on or before February 29, 2016, or on such date as shall be agreed to by both the Company and the Agency.

Section 4.4 Performance by Phase I Sublessee. The parties agree that any and all of the obligations of the Company under the Lease Agreement may be satisfied and fulfilled by the Phase I Sublessee and that performance by the Phase I Sublessee shall be deemed to be performance by the Company.

Section 4.5 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Phase I 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 their expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action

or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company, and to take all action necessary to effect the substitution of the Company, as the case may be, for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other Person shall be paid to the Company.

ARTICLE V
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Phase I Facility. The Agency hereby subleases the Phase I Land as more particularly described in Exhibit A-1 attached hereto and subleases and leases the Phase I Improvements and the Phase I Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Phase I Facility from the Agency upon the terms and conditions of this Phase I Facility Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Phase I Facility (subject to Sections 3.3, 8.3 and 10.2 hereof), and the subleasehold or leasehold estate created hereby shall commence, on the Closing Date and the Company shall accept possession of the Phase I Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the subleasehold and leasehold estate created hereby shall terminate at 11:59 p.m. on November 30, 2036 or on such earlier date as may be permitted by Section 11.1 and 10.2 hereof (the "**Lease Term**").

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Phase I Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Phase I Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the Agency's fee in the amount of \$133,908.00 (equal to the administrative fee of \$133,352.00 plus the public hearing notice costs of \$556.00) for the Facility (which shall include the Phase I Facility, the Phase II Facility and the Phase III Facility). The Company shall pay basic rent for the Facility One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000.00 for the Facility on the Closing Date and on or before January 1 of each year or within ten (10) days of receipt of demand therefore by the Agency, commencing on January 1, 2015 and continuing through the term of the Lease Agreement.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of receipt of demand therefore, an amount equal to the sum of the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency's leasing, subleasing or financing of the Phase I Facility in accordance with this Phase I Facility Lease Agreement, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents in accordance therewith, the payment of which expenses is not otherwise provided for under this Phase I Facility Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency that has been invoiced to the Company on or prior to the date hereof.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or (b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional.

(a) The obligations of the Company to make the payments required in Section 5.3 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 agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Phase I Facility Lease Agreement or (iii) terminate this Phase I Facility Lease Agreement for any cause whatsoever, except as provided in the provisions of this Phase I Facility Lease Agreement.

(b) Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Phase I Facility Lease Agreement or to affect the right of the Company to

seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 8.3, Article X and Article XI hereof, take, suffer or permit any action which will adversely affect, or create any defect in its leasehold interest in the Phase I Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company, in the Company's sole discretion.

Section 5.5 Reserved.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event any Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof: (i) all references in this Phase I Facility Lease Agreement to such Lender, such Note and such Mortgage applicable to such Loan shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Phase I Facility from the date of such payment until the earlier of (A) the scheduled expiration of the Lease Term and (B) the date the Company enters into another Note and Mortgage, on all of the terms and conditions hereof, or the Company may, at its option, require the Agency to convey the Phase I Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment, the Company, at its sole cost and expense, shall obtain and cause to be recorded or filed appropriate discharges or releases of the applicable Mortgage and any other security interest relating to the Phase I Facility or this Phase I Facility Lease Agreement.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Phase I Facility by Company.

(a) During the Lease Term, the Company shall not abandon the Phase I Facility or cause or permit anyone under the control of the Company to cause any material waste to the Phase I Facility. During the Lease Term, the Company shall not remove any material part of the Phase I Facility outside of the jurisdiction of the Agency (except as necessary in the ordinary course of business of the Company) and shall (i) keep the Phase I Facility or cause the Phase I Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make or cause to be made all necessary repairs and replacements to the Phase I Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Phase I Facility in a sound and commercially reasonable manner.

(b) With the written consent of the Agency, which consent shall not be unreasonably withheld, and the Lender, if any (if required by such Lender) the Company from time to time may make any structural additions, modifications or improvements to the Phase I Facility or any part thereof, provided such actions do not materially and adversely affect the structural integrity of the Phase I Facility. All such additions, modifications or improvements made by the Company during the Lease Term shall become a part of the Phase I Facility and subject to the Phase I Facility Company Lease and this Phase I Facility Lease

Agreement, as applicable. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency an interest in or title to such property.

Section 6.2 Installation of Additional Phase I Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Phase I Facility (which may be attached or affixed to the Phase I Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Phase I Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Phase I Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred and is then continuing; or (ii) if any such removal shall adversely affect the structural integrity of the Phase I Facility or materially impair the overall operating efficiency of the Phase I Facility for the purposes for which it is intended, and provided further, that if any damage to the Phase I Facility is occasioned by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the exemptions from real property taxes as provided under the Phase I Facility PILOT Agreement and the sales tax letter delivered by the Agency to the Company, the Company agrees to pay, or cause to be paid, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof: (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Phase I Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Phase I Facility or any part or component thereof, or the rental or sale of the Phase I Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Phase I 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 Phase I Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement; 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 Phase I Facility Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such

proceedings and any appeal therefrom, provided, however, that (i) neither the Phase I Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency or any Lender.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts, which such obligation shall survive the expiration or termination of this Phase I Facility Lease Agreement.

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

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, or caused to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase I Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property

damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

- Premises and Operations
- Products and Completed Operations
- Owners Protective
- Contractors Protective
- Contractual Liability
- Personal Injury Liability
- Broad Form Property Damage
(including completed operations)
- Explosion Hazard
- Collapse Hazard
- Underground Property Damage Hazard

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

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Phase I 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 and any Lender that no portion of the Phase I Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4 (a) and (e) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of any Lender and shall provide for payment to any Lender of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency and any Lender of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and any Lender as additional insureds. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to any Lender pursuant to the Mortgage, and the Company consents thereto. Upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation. Nothing contained in this Phase I Facility Lease Agreement is intended to limit or modify any insurance requirements set forth in any Mortgage or other Loan Document executed in connection therewith.

(b) The policies (or a certificate or binder) of insurance required by Section 6.4(a), (b), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the policy (or a certificate or binder) of insurance required by Section 6.4(c) hereof shall be delivered to the Agency on or before the Closing Date. Original certificates (or binders) of insurance required by Sections 6.4(d) (ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company

shall furnish to the Agency and any other appropriate Person evidence that such policy or policies have been renewed or replaced or are no longer required by this Phase I Facility Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Phase I Facility Lease Agreement as the Agency and any Lender may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) subject to the terms of any Mortgage or other Loan Document, the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) 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 Lender or Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, payments in lieu of taxes pursuant to the Phase I Facility PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Phase I 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 Phase I Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency or Lender, if any, may pay or cause to be paid such tax, payments in lieu of taxes pursuant to the Phase I Facility PILOT Agreement, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency or any Lender until at least ten (10) days shall have elapsed since notice shall have been given by any Lender to the Agency, with a simultaneous copy of such notice being given to the Company (or by the Agency to any Lender and the Company), and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (iii), (iv), and (v) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Phase I Facility Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency or any Lender shall affect or impair any rights of the Agency hereunder or of the Lender, if any, under the Mortgage arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency or any Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or any Lender pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency or any Lender at one percent (1%) in excess of the rate set forth in any applicable Note, and such amount, together with such interest, shall become additional indebtedness secured by such applicable Mortgage.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Phase I Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase I Facility Lease Agreement or the Phase I Facility PILOT Agreement (whether or not the Phase I Facility is replaced, repaired, rebuilt, restored or relocated);

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

(iv) except as set forth in paragraph (e) below, upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders to the extent provided in the applicable Mortgage, and except as otherwise provided in Section 11.1 and subsection (d) hereof and in the applicable Mortgage, applied by such Lender or Lenders pursuant to the terms of the Mortgage or Mortgages or other Loan Documents; and

(v) if the Phase I Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Phase I Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions either of Sections 11.2, 11.3 and 11.4 hereof or of Section 7.1(g) hereof shall apply.

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

(i) the Phase I Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase I Facility that it does not constitute a "project" as such term is defined in the Act;

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

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

(iv) any other conditions any Lender may reasonably impose.

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

(d) If the Company shall exercise its option to terminate this Phase I Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, subject to the terms of any Mortgage or other Loan Documents. If an Event of Default hereunder shall have occurred and will be continuing and the Agency or any Lender shall have exercised their respective remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof, subject to the terms of any Mortgage or other Loan Documents.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) Except upon the occurrence of an Event of Default, the Company, with the consent of the Agency shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) and (e) hereof on behalf of the Agency and on its own behalf.

(g) If the Phase I Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, the Phase I Facility may be reconveyed to the Company subject to any Mortgage.

Section 7.2 Condemnation.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase I Facility Lease Agreement or the Phase I Facility PILOT Agreement (whether or not the Phase I Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities are acquired);

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

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company and the Company shall promptly replace, repair, rebuild, restore or relocate the Phase I Facility or acquire Substitute Facilities, or cause the Phase I Facility to be replaced, repaired, rebuilt or restored, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders pursuant to the terms of the applicable Mortgage except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by such Lender or Lenders pursuant to the terms of the applicable Mortgage; and

(v) if the Phase I Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Phase I Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions of either Sections 11.2, 11.3 and 11.4 hereof or of Section 7.2(g) hereof shall apply.

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

(i) the Phase I Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase I Facility that it does not constitute a “project” as such term is defined in the Act;

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

(iii) following completion of any such replacement, repair, rebuilding or restoration, the Phase I Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances

(iv) any other conditions the Agency or any Lender may reasonably impose pursuant to the applicable Mortgage.

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

(d) If the Company shall exercise its option to terminate this Phase I Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender, if any, shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall be retained by the Company.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Phase I Facility has been substantially condemned and is not replaced, repaired, rebuilt, restored or relocated and a Substitute Facility is not acquired, renovated and equipped, the Phase I Facility may be reconveyed to the Company subject to any Mortgage.

(g) Except upon the occurrence of an Event of Default, the Company with the prior written consent of the Agency shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Agency and on its own behalf.

Section 7.3 Condemnation of Company-Owned Property. Subject to the terms of any Mortgage or other Loan Documents, 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 Phase I 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 Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE PHASE I FACILITY OR THAT THE PHASE I FACILITY IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (collectively, the "**Indemnified Parties**") shall not be liable for and agrees to defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all (i) liability for 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 Phase I 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 Phase I Facility, or (ii) liability arising from or expense incurred by the Agency's acquisition, demolition, construction, equipping, leasing, and subleasing of the Phase I Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) of this Phase I Facility Lease Agreement, all claims arising from the breach of any of the Company's covenants contained in Section 8.8 of this Phase I Facility 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 Phase I Facility Lease Agreement (including without limitation this Section) or any of the other Agency Documents) and, any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, 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 any of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Phase I Facility 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 Phase I Facility 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, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by any of the Indemnified Parties, relating to the enforcement of the provisions herein specified.

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

Section 8.3 Right to Inspect Phase I Facility. The Agency and its duly authorized agents of either of them shall have the right at all reasonable times on reasonable notice to inspect the Phase I Facility.

Section 8.4 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will maintain its existence, and will not dissolve, liquidate or otherwise dispose of substantially all of its assets, will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

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

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 an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase I Facility in compliance with Section 874(8) of the New York State General Municipal Law (the "GML"). The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Company further agrees whenever requested by the Agency 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 Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all commercial sublessees at the Phase I Facility to comply with the requirements of this Section 8.6 by requiring such sublessees to enter into Tenant Agency Compliance Agreements.

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

Section 8.8 Compliance with Orders, Ordinances, Etc.

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

(b) The Company shall keep or cause the Phase I Facility to be kept free of Hazardous Substances other than Hazardous Substances used in the ordinary course of the Company's operations in compliance with all applicable federal, state and local laws or regulations. Without limiting the foregoing, the Company shall not cause or permit the Phase I Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Phase I Facility or onto any other property in violation of all applicable laws and regulations. The Company shall comply with and shall use commercially reasonable efforts to ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) conduct and complete, or cause to be conducted and completed, all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances in violation of all applicable laws and regulations, on, from, or affecting the Phase I Facility (A) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, and (B) in accordance with the applicable orders and directives of all federal, state, and local governmental authorities; and (ii) defend, indemnify, and hold harmless the Indemnified Parties, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, reasonable costs, or reasonable expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release, or threatened release of any Hazardous Substances at

the Phase I Facility which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances in violation of all applicable laws and regulations, and/or (D) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event any Mortgage is foreclosed by any Lender or the Company tenders a deed in lieu of foreclosure to any Lender, the Company shall deliver the Phase I Facility to such Lender free of any and all Hazardous Substances in violation of all applicable laws and regulations so that the condition of the Phase I Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Phase I Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law, and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section 8.8, the Agency and any Lender each retain the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Agency and any Lender shall select their own counsel, and any and all costs of such defense,

including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) hereof, 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 or any Lender shall notify the Company that by nonpayment of any such item or items, the lien of the applicable Mortgage may be materially endangered or the Phase I 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 a bond, in form and substance satisfactory to the Agency and any Lender, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency and any Lender to protect their respective interests. Mechanics' Liens shall be discharged or bonded within sixty (60) days of the filing or perfection thereof.

Section 8.10 Identification of Phase I Equipment. All Phase I Equipment which is or may become the Property of the Agency pursuant to the provisions of this Phase I Facility Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Phase I Equipment and other Property of whatever nature affixed or attached to the Phase I Land or used or to be used by the Company in connection with the Phase I Land or the Phase I Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of renovation of the Phase I Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Phase I Facility Lease Agreement and such Phase I Equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Phase I Facility and to any investment credit with respect to any part of the Phase I Facility.

Section 8.12 Employment Opportunities; Notice of Jobs. The Company covenants and agrees, and shall request any and all sublessees to covenant and agree, that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Phase I 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 Phase I Facility is located

(collectively, the “**Referral Agencies**”). The Company also agrees, and shall request any and all sublessees to agree, that they will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.13 Employment at the Phase I Facility. The Company covenants at all times to maintain or cause the Phase I Sublessee to maintain at the Phase I Facility four (4) full time equivalent employees calculated on the basis of 35 hours per week (“FTE”) as of December 31, 2018 (including the FTEs of all tenants located at the Phase I Facility) (except as such number may be revised pursuant to an agreement between the Company and the Agency) and thereafter throughout the Lease Term who are employees of the Company or any subsidiary or affiliates of the Company or tenants of the Company or of the Phase I Sublessee located at the Phase I Facility whose place of employment or workplace is located at the Phase I Facility; provided that failure to comply with the foregoing shall not be a breach of the foregoing covenant or an Event of a Default hereunder as long as such failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions. It is further provided that the Company and the Phase I Sublessee may not actually provide the FTEs at the Phase I Facility, but rather shall sublease the Phase I Facility to tenants, provided that (a) the Company and/or the Phase I Sublessee use all reasonable efforts to lease up the commercial portion of the Phase I Facility, and (b) include provisions in all commercial subleases requiring any tenant to comply with the provisions of the Phase I Facility Lease Agreement applicable to them.

Section 8.14 Compliance with the Act. The Company hereby agrees to comply with Section 875 of the GML. The Company further agrees that the exemption of sales and use taxes provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to Section 4.1(d) hereof is subject to recapture of benefits pursuant to Section 875 and the Phase I Facility Recapture Agreement.

ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency, during the Lease Term, shall not sell, convey, transfer, lease encumber or otherwise dispose of the Phase I Facility or any part thereof, or any of its rights under this Phase I Facility Lease Agreement, without the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned and any Lender.

(b) With the prior written consent of the Lender, if required by any Loan Documents, the Agency and the Company from time to time may release from the provisions of this Phase I Facility Lease Agreement and the leasehold estate created hereby any part of,

or interest in, the Phase I Land which is not necessary, desirable or useful for the Phase I Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Phase I Land and convey such title thereto, or interest therein, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Agency shall be provided with a copy of the instrument transferring such title or interest in such Phase I Land, an instrument survey (if the Lender so requests) of the Phase I Land to be conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Phase I Facility Lease Agreement and that such part of, or interest in, the Phase I Land is not necessary, desirable or useful for the Phase I Facility.

(c) Except as provided in Section 9.3 hereof, nothing herein shall limit the Company's right to sell and/or mortgage its interests herein and the Agency shall, at the sole cost and expense of the Company, sell, convey, transfer, lease, assign, encumber, pledge or otherwise assist the Company in disposing of the Phase I Facility, any part thereof or any interest therein. In such case, the Agency shall execute, acknowledge when appropriate, and deliver from time to time at the request of the Company all such instruments and documents as in the opinion of the Company may be desirable, necessary or required to effectuate the transaction contemplated and otherwise cooperate to effectuate and carry out the intent and purpose of the contemplated transaction. In the event the Company desires to take any of the foregoing actions, the Agency agrees to execute and delivery an estoppel certificate certifying such items as may reasonably be required by any such purchaser, assignee, mortgagee or other potential lienor.

(d) No conveyance of any part of, or interest in, the Phase I Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Phase I Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase I Facility PILOT Agreement.

Section 9.2 Removal of Phase I 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 Phase I Equipment. In any instance where the Company determines that any item of Phase I Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of any Lender, if required by the Mortgage, if any, may remove such items from the Phase I Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, if any, provided that such removal will not materially impair the operation of the Phase I Facility for the purpose for which it is intended or change the nature of the Phase I Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Phase I Equipment. The Company shall pay any costs (including counsel fees) of the Agency, and all of its own expenses, incurred in transferring title to any item of Phase I Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Phase I Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Phase I Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase I Facility PILOT Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Phase I Facility Lease Agreement may not be assigned, in whole or in part, and the Phase I Facility may not be further subleased, in whole or in part (except pursuant to the Phase I Facility Sublease Agreement and the Conifer Sublease Agreement), without the prior written consent of the Agency for any commercial sublease, in each instance, which consent shall not be unreasonably withheld, conditioned or delayed but shall be subject to the dates of the Agency's Board meetings, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement, in substantially the form attached hereto as Exhibit D, by an Authorized Representative of the Agency. Any assignment or commercial sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder, unless the Agency consents to such release;
- (ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Phase I Facility Lease Agreement or any Mortgage shall be adversely affected thereby;
- (v) the Phase I Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Phase I Facility to be used in violation of the Act and no assignment or sublease shall cause the Phase I Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;
- (vi) any commercial (as opposed to residential) sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit D.

Notwithstanding any of the foregoing to the contrary, the foregoing requirements shall not apply to any residential sublease.

(b) If any Lender or the Agency shall so reasonably 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 cost shall furnish any Lender and the Agency with opinions, in form and substance satisfactory to any Lender and the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) Notwithstanding anything to the contrary in Section 9.3(a) hereof, the Company may assign this Phase I Facility Lease Agreement, without the consent of the Agency, but with prior written notice to the Agency, to any entity in which the Company owns a controlling interest.

(d) In accordance with Section 862(1) of the Act, the Phase I 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 Phase I 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 Phase I Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 9.4 Mortgage and Pledge of Agency's Interest to Lender. The Agency shall, at the request of and at the sole cost and expense of the Company, (i) mortgage its interest in the Phase I Facility, and (ii) pledge and assign its rights to and interest in this Phase I Facility Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Phase I Facility Lease Agreement (other than Unassigned Rights), to any Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its exclusive benefit.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Phase I Facility Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 9.6 Merger of Agency. Nothing contained in this Phase I Facility Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of the leasehold interest in the Phase I Facility, to the entire Phase I Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Phase I Facility and the legal right to continue the tax benefits

(e.g., real estate tax, sales and use tax and mortgage recording tax exemptions) contemplated to be provided to the Company in accordance with the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Phase I Facility Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Phase I Facility shall be transferred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be “Events of Default” under this Phase I Facility Lease Agreement:

(i) the failure by the Company to pay or cause to be paid on the date due, or within the applicable grace period, the amount specified to be paid pursuant to Section 5.3 (a) and (b) hereof;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(f) and (g), 6.3, 6.4, 6.5, 8.2, 8.4, 8.6, 8.8, 8.13, 8.14 and 9.3 hereof, which is not cured within thirty (30) days after written notice;

(iii) the failure by the Company to pay or cause to be paid on the dates due, or within the applicable grace period, the amounts specified to be paid pursuant to the Phase I Facility PILOT Agreement or the Phase I Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;

(iv) the occurrence and continuation of a Recapture Event under the Phase I Facility Recapture Agreement;

(v) the invalidity, illegality or unenforceability of the Phase I Facility PILOT Agreement, or the failure due to an action or inaction on the part of the Company to observe and perform any material covenant contained in the Phase I Facility PILOT Agreement or the Phase I Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;

(vi) any material representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading when made in any material respect;

(vii) the failure by the Company to observe and perform any material covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a

period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or any Lender, or, if such covenant is capable of cure but cannot be cured within such thirty (30) days period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute such cure to completion;

(viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days after notice to the Company any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for thirty (30) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

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

(x) an Event of Default under any other documents executed and delivered in connection with any Mortgage shall have occurred and be continuing beyond any applicable notice and cure period;

(xi) the invalidity, illegality or unenforceability of any Mortgage or any other documents executed and delivered in connection with such Mortgage;

(xii) an Event of Default or a default by the Company under the Phase I Facility Environmental Compliance and Indemnification Agreement shall have occurred and be continuing beyond any applicable notice and cure period;

(xiii) sale or closure of the Phase I Facility and/or departure of the Company from the Town of Brookhaven, except as permitted under Article IX hereof;
or

(xiv) a default by any sublessee under its respective Tenant Agency Compliance Agreement; provided, however, that any such default shall not constitute an Event of Default hereunder so long as the Company is

proceeding diligently to cure such default or the Company has terminated, or is using commercially reasonable efforts to terminate, the sublease agreement with such defaulting sublessee and has evicted, or is using commercially reasonable efforts to evict, such defaulting sublessee.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Phase I Facility Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Phase I Facility Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) Notwithstanding anything to the contrary contained herein, the Phase I Sublessee's Investor Member shall have the right, but not the obligation to, cure a default hereunder, and the Agency agrees to accept such cure as if provided by the Company.

(d) The parties hereto mutually agree that upon the occurrence and continuation of an Event of Default, the Lender shall be entitled to notice at the same time and in the same manner as the Company. The Lender, after expiration of the Company's cure period for any Event of Default described in Section 10.1 hereof, shall have an additional (i) ten (10) days to cure monetary defaults; and (ii) thirty (30) days to cure non-monetary defaults capable of being cured. Performance of any cure by the Lender shall be accepted as performance by the Company.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the Phase I Facility PILOT Agreement, (C) all amounts due and owing under the Phase I Facility Recapture Agreement; and (D) all other payments due under this Phase I Facility Lease Agreement and the Phase I Facility PILOT Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(viii) hereof shall have occurred, such installments of rent and other payments due under this Phase I Facility Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency or any Lender;

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

(iii) upon the occurrence and continuation of an Event of Default under the Mortgage, and only at the direction of the Lender, terminate, on ten (10) days written notice to the Company, the Lease Term and all rights of the Company under this Phase I Facility Lease Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Phase I Facility and lease the Phase I Facility to the Lender or the designee of the Lender for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease; or

(iv) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement, to secure possession of the Phase I Facility and to enforce the obligations, agreements and covenants of the Company under this Phase I Facility Lease Agreement and under the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement.

(b) No action taken pursuant to this Section 10.2 (including repossession of the Phase I Facility) shall relieve the Company from its obligation to make all payments required

by Section 5.3 hereof or under the Phase I Facility PILOT Agreement or the Phase I Facility Recapture Agreement, except that upon reconveyance of the Phase I Facility to the Company pursuant to Section 10.2(a)(ii), the Phase I Facility PILOT Agreement shall terminate.

(c) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and to any Lender to enter the Phase I Facility with agents or representatives of the Agency and any Lender to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Phase I Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or any Lender 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 Phase I Facility 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 and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency and any Lender, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Phase I Facility 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 this Phase I Facility Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

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

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year within thirty (30) days after delivery of a written request therefor from the Agency, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Phase I Facility Lease Agreement and no Event of Default exists under this Phase I Facility Lease Agreement, the Phase I Facility PILOT Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.6 hereof to the extent such information is not otherwise deliverable on a different date.

ARTICLE XI
EARLY TERMINATION OF LEASE AGREEMENT

OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Phase I Facility Lease Agreement at any time, whether a default exists hereunder or not, and for any reason whatsoever, upon filing with the Agency and any Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 11.2 hereof; provided however, that if a Mortgage on the Phase I Facility is in effect, then the Company shall not exercise, and the Agency shall not accept the Company's exercise of, its option to terminate this Phase I Facility Lease Agreement without the prior written consent of the Lender.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Phase I Facility Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make, or cause to be made, the following payments:

- (a) To the Agency or the Taxing Authorities (as such term is defined in the Phase I Facility PILOT Agreement) as appropriate pursuant to the Phase I Facility PILOT Agreement: all amounts sufficient to pay all due and payable, current and past due payments in lieu of taxes under the Phase I Facility PILOT Agreement, as of the date of conveyance.
- (b) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.
- (c) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

All such amounts shall be supported by statement and invoices with reasonable detail evidencing the amounts due.

Section 11.3 Obligation to Purchase Phase I Facility. Upon expiration or termination of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Phase I Facility from the Agency, and the Agency shall sell the Phase I Facility to the Company, for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to the Phase I Facility PILOT Agreement through the date upon which this Phase I Facility Lease Agreement terminates or expires. The Company shall accept surrender of the Phase I Facility by giving written notice to the Agency and to any Lender (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to accept surrender of the Phase I Facility, and (ii) fixing the date of closing such surrender of the Phase I Facility, which shall be the date on which this Phase I Facility Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any surrender of the Phase I Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the

consideration for surrender, deliver and request the Lender, if any, to deliver to the Company all necessary documents (i) to convey to the Company, by a leasehold estate, or, title to the Property being surrendered, as such Property exists, subject only to the following: (A) any Liens to which the leasehold interest or title to such Property was subject when conveyed to the Agency, (B) 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, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Phase I Facility Lease Agreement or arising out of an Event of Default hereunder, (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Phase I Facility (but not including any Unassigned Rights); and (iii) (A) to release the Agency from any Mortgage and any other Loan Documents to which it is a party, and (B) if applicable, to discharge and release the Mortgage and any other security interest held by such Lender. The Agency shall also execute and deliver a Bill of Sale relating to the Phase I Equipment and Phase I Improvements on the Phase I Land and any documents reasonably necessary to discharge of record this Phase I Facility Lease Agreement or any memorandum thereof. Upon the conveyance of the Phase I Facility by the Agency to the Company pursuant to this Article XI, the Phase I Facility PILOT Agreement shall terminate.

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, or via reputable overnight delivery service, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Executive Director

To the Company:

CV Village at Coram, LLC
183 E. Main Street, Suite 600
Rochester, New York 14604
Attention: Allen Handelman, Vice President

With a copy to:

Red Stone-Fund 42 Limited Partnership
c/o Red Stone Equity Partners, LLC
200 Public Square, Suite 1550
Cleveland, Ohio 44114

And:

Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Attention: Roger W. Holmes, Esq.

And:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Daniel P. Deegan, Esq.

To the construction Lender:

Capital One, National Association
280 Park Avenue, 22nd Floor
New York, New York 10017
Attention: Edward Santos

With a copy to:

Jones Day
222 East 41st Street
New York, New York 10017
Attention: Aviva Yakren, Esq.

To the permanent Lender:

Community Development Trust
1350 Broadway, Suite 700
New York, NY 10018
Attention: Brian Gallagher

With a copy to:

Ballard Spahr, LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
Attention: Mary Jo George, Esq.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall deliver written instructions to the Agency and the Company with the address of such Lender.

Section 12.2 Binding Effect. This Phase I Facility Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Phase I Facility 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 12.4 Amendments, Changes and Modifications. This Phase I Facility Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and consented thereto by any Lender.

Section 12.5 Execution of Counterparts. This Phase I Facility 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 12.6 Applicable Law. This Phase I Facility Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Phase I Equipment; Further Assurances. (a) Upon the Completion Date with respect to the Phase I Facility and the installation of all of the Phase I Equipment therein, the Company shall prepare and deliver to the Agency a schedule listing all of the Phase I Equipment not previously described in this Phase I Facility 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 equipment not theretofore previously described herein or in the aforesaid schedule.

(b) 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 Phase I Facility Lease Agreement.

Section 12.8 Survival of Obligations. This Phase I Facility Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 5.3, and all indemnities shall survive the foregoing and any termination or expiration of this Phase I Facility Lease Agreement.

Section 12.9 References to Lender, Loan, Note, or Mortgage. Any references herein to Lender, Loan, Note or Mortgage or other similar words, whether in the singular or the plural, are in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

Section 12.10 Mortgage Financing. In order to finance or refinance certain costs of the acquisition, demolition, construction and equipping of the Phase I Facility, the Company may decide to utilize a lender or lenders, as may be determined, to finance,

refinance, modify and/or extend an amount as determined by the Company on the date of delivery of this Phase I Facility Lease Agreement or thereafter, including existing loans (the “**Loan**”). The Agency agrees to cooperate with the Company in connection with such financing or refinancing, including without limitation granting one or more mortgages on the Phase I Facility, inclusive of any existing mortgages, executing such other documents required by the Company’s lender(s) and complying with the terms and provisions of such mortgage(s) and other documents, provided that such mortgage and other documents shall meet all the requirements set forth on Exhibit E attached hereto and made a part hereof. The Agency and the Company agree that this Phase I Facility Lease Agreement shall be subject and subordinate to the Loan and the term and provisions of all documents evidencing and securing the Loan (collectively, the “**Loan Documents**”). The Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Loan Documents.

Section 12.11 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Phase I Facility Lease 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 Phase I Facility Lease Agreement.

Section 12.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Phase I Facility Lease Agreement or the Phase I Facility or any matters whatsoever arising out of or in any way connected with this Phase I Facility Lease Agreement.

(Remainder of Page Intentionally left Blank -Signature Pages Follow)

IN WITNESS WHEREOF, the Agency and the Company have caused this Phase I Facility Lease Agreement to be executed in their respective names by their duly authorized officers, all as of February 1, 2014.

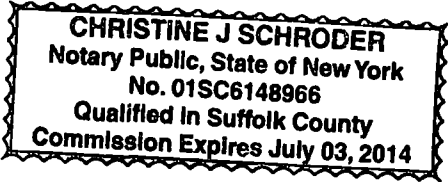
**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

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

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

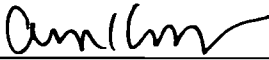
On the 1st day of February in the year 2014, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Christine J Schroder
Notary Public



CV VILLAGE AT CORAM, LLC

By: Conifer Realty, LLC, its sole member

By 
Name: Andrew I. Crossed
Title: Executive Vice President

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

On the 14th day of February in the year 2014, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

S STURMAN JENNINGS
Notary Public State of New York
No 02JE6096835
Qualified in Monroe County
Commission Expires August 11, 2015

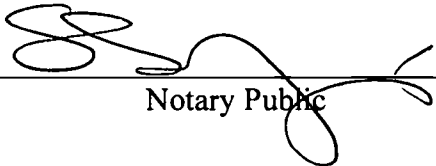

Notary Public

EXHIBIT A-1

Legal Description of Phase I Land

SCHEDULE A

PHASE 1 LEGAL DESCRIPTION

PHASE 1 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-029.004 & p/o 29.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point on the southerly boundary line of Farmers Avenue (not-open), said point of beginning being North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 435.6 feet from a point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue;

Thence from said point of beginning, North 85°07'07" East along said southerly boundary line a distance of 316.94 feet to the southeasterly terminus of Farmers Avenue (not-open);

Thence North 26°50'17" East along the easterly terminus of Farmers Avenue (not open), then lands now or formerly of Avalon Bay Communities, Inc. on the west and through the lands of CV Village at Coram, LLC., a distance of 182.93 feet to a point;

Thence continuing through the lands of CV Village at Coram, LLC. the following twenty seven (27) courses and distances;

1. South 56°27'26" East, a distance of 22.27 feet to a point, thence
2. North 33°32'34" East, a distance of 46.85 feet to a point, thence
3. South 56°27'26" East, a distance of 202.50 feet to a point, thence
4. North 33°32'34" East, a distance of 25.31 feet to a point, thence
5. South 56°27'26" East, a distance of 75.61 feet to a point, thence
6. South 33°32'34" West, a distance of 38.70 feet to a point, thence
7. South 56°27'26" East, a distance of 61.29 feet to a point, thence
8. South 33°32'34" West, a distance of 81.11 feet to a point, thence
9. South 56°27'26" East, a distance of 77.01 feet to a point, thence
10. South 33°32'34" West, a distance of 46.34 feet to a point, thence
11. South 56°27'26" East, a distance of 116.97 feet to a point, thence
12. North 83°59'47" East, a distance of 63.84 feet to a point, thence
13. North 06°00'13" West, a distance of 83.40 feet to a point, thence
14. South 83°59'47" West, a distance of 41.93 feet to a point, thence
15. North 25°40'54" East, a distance of 68.91 feet to a point, thence
16. North 56°27'26" West, a distance of 39.56 feet to a point, thence

17. North 33°31'54" East, a distance of 22.07 feet to a point, thence
18. North 05°18'13" West, a distance of 42.36 feet to a point, thence
19. North 29°39'59" East, a distance of 32.15 feet to a point, thence
20. North 17°51'00" West, a distance of 84.24 feet to a point, thence
21. North 70°48'45" West, a distance of 36.26 feet to a point, thence
22. North 11°24'25" West, a distance of 154.94 feet to a point, thence
23. North 49°15'49" West, a distance of 257.25 feet to a point, thence
24. North 71°17'22" West, a distance of 79.21 feet to a point, thence
25. North 85°27'01" West, a distance of 79.70 feet to a point, thence
26. South 47°47'14" West, a distance of 34.42 feet to a point, thence
27. South 26°56'56" West, a distance of 180.00 feet to a point on the easterly boundary of lands of the State of New York (recharge basin);

Thence northerly along said boundary, the following two (2) courses and distances;

1. North 2°27'42" East, a distance of 109.24 feet to a point, thence
2. North 12°37'19" West, a distance of 229.07 feet to point on the southerly boundary of lands of Selective Coram, Inc.

Thence easterly and northerly along said boundary, the following two (2) courses and distances;

1. North 80°30'17" East, a distance of 84.95 feet to a point, thence
2. North 7°01'27" East, a distance of 200.00 feet to point on the southerly boundary line Middle country Road (N.Y.S. Rt. 25);

Thence Easterly along the southerly boundary line of Middle Country Road (N.Y.S. Rt. 25) along an arc of a curve to the left having a radius of 756.78 feet a distance of 104.41 (calc) 104.36 (deed) to a point;

Thence southerly along the westerly boundary line of lands of Smithtown Rte. 111 Properties, LLC. and the easterly line of a 20' wide Right of Way, South 9°30'17" West, a distance of 333.55 feet to a point;

Thence easterly and northerly along said lands of Smithtown Rte. 111 Properties, LLC. the following three (3) courses and distances;

1. South 67°48'03" East, a distance of 136.67 feet to a point, thence
2. North 12°01'17" East, a distance of 178.67 feet to a point, thence
3. North 40°28'07" East, a distance of 27.05 feet to lands of Partnership of Mirabelli & Brandt;

Thence, easterly along said boundary and then lands of M K L V Ventures, Inc. the following three (3) courses and distances

1. South 66°51'13" East, a distance of 75.63 feet to a point, thence
2. South 43°02'23" East, a distance of 229.94 feet to point, thence

3. North 83°11'27" East, a distance of 50.00 feet to the westerly boundary line of lands of 3712 Route 112, LLC.

Thence southerly and easterly along said boundary line the following two (2) courses and distances;

- 1. South 6°48'33" East, a distance of 50.00 feet to point, thence**
- 2. North 83°11'27" East, a distance of 100.00 feet to point on the westerly boundary line of the Port Jefferson-Patchogue Road (N.Y.S. RT. 112);**

Thence, southerly along said boundary the following two (2) courses and distances

- 1. South 6°56'13" East, a distance of 276.87 feet to a point, thence**
- 2. South 5°57'33" East, a distance of 483.17 feet to point on the northerly boundary line of lands of Milap Enterprises Inc.;**

Thence westerly along said boundary line, then the northerly terminus of Coram Avenue and then other lands of Milap Enterprises Inc. the following two (2) courses and distances;

- 1. South 82°17'07" West, a distance of 918.53 feet to a point, thence**
- 2. South 85°07'07" West, a distance of 104.53 to a point on the easterly boundary of lands now or formerly of Anne M. Wilberg revocable Trust;**

Thence northerly along lands now or formerly of Anne M. Wilberg revocable Trust and then lands now or formerly of Caroline Giovanniello & Anthony Giovanniello North 4°52'53" West, a distance of 400.00 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-2

Legal Description of Phase II Land

SCHEDULE A

PHASE 2 LEGAL DESCRIPTION

PHASE 2 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at an angle point on the easterly boundary line of lands now or formerly of Avalon Bay Communities, Inc., said point of beginning being the following two courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

1. North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet
2. North 26°50'17" East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 165.11 feet

Thence from said point of beginning North 50°48'13" West, a distance of 124.89 feet to point on the easterly boundary of lands of the State of New York (recharge basin)

Thence northerly along the easterly boundary of lands of the State of New York (recharge basin) North 2°27'42" East, a distance of 69.37 to a point

Thence through the lands of CV Village at Coram, LLC. the following twenty five (25) courses and distances;

1. North 26°56'56" East, a distance of 180.00 feet to a point, thence
2. North 47°47'14" East, a distance of 34.42 feet to a point, thence
3. South 85°27'01" East, a distance of 79.70 feet to a point, thence
4. South 71°17'22" East, a distance of 79.21 feet to a point, thence
5. South 49°15'49" East, a distance of 257.25 feet to a point, thence
6. South 11°24'25" East, a distance of 154.94 feet to a point, thence
7. South 70°48'45" East, a distance of 36.26 feet to a point, thence
8. South 17°51'00" East, a distance of 84.24 feet to a point, thence
9. South 29°39'59" West, a distance of 32.15 feet to a point, thence
10. South 05°18'13" East, a distance of 42.36 feet to a point, thence

11. South 33°31'54" West, a distance of 22.07 feet to a point, thence
12. South 56°27'26" East, a distance of 39.56 feet to a point, thence
13. South 25°40'54" West, a distance of 68.91 feet to a point, thence
14. North 56°27'26" West, a distance of 80.77 feet to a point, thence
15. South 33°32'34" West, a distance of 31.92 feet to a point, thence
16. North 56°27'26" West, a distance of 77.01 feet to a point, thence
17. North 33°32'34" East, a distance of 81.11 feet to a point, thence
18. North 56°27'26" West, a distance of 61.29 feet to a point, thence
19. North 33°32'34" East, a distance of 38.70 feet to a point, thence
20. North 56°27'26" West, a distance of 75.61 feet to a point, thence
21. South 33°32'34" West, a distance of 25.31 feet to a point, thence
22. North 56°27'26" West, a distance of 202.50 feet to a point, thence
23. South 33°32'34" West, a distance of 46.85 feet to a point, thence
24. North 56°27'26" West, a distance of 22.27 feet to a point, thence
25. South 26°50'17" West, a distance of 17.82 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-3

Legal Description of Phase III Land

PHASE 3 LEGAL DESCRIPTION

PHASE 3 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point within the lands of CV Village at Coram, LLC, said point of beginning being the following courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet

North 26°50'17" East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 182.93 feet

Thence through the lands of CV Village at Coram, LLC the following nine (9) courses and distances

1. South 56°27'26" East, a distance of 22.27 feet to a point, thence
2. North 33°32'34" East, a distance of 46.85 feet to a point, thence
3. South 56°27'26" East, a distance of 202.50 feet to a point, thence
4. North 33°32'34" East, a distance of 25.31 feet to a point, thence
5. South 56°27'26" East, a distance of 75.61 feet to a point, thence
6. South 33°32'34" West, a distance of 38.70 feet to a point, thence
7. South 56°27'26" East, a distance of 61.29 feet to a point, thence
8. South 33°32'34" West, a distance of 81.11 feet to a point, thence
9. South 56°27'26" East, a distance of 77.01 feet to a the point or place of beginning;

Thence from said point of beginning through the lands of CV Village at Coram, LLC. the following seven (7) courses and distances;

1. North 33°32'34" East, a distance of 31.92 feet to a point, thence
2. South 56°27'26" East, a distance of 80.77 feet to a point, thence
3. North 83°59'47" East, a distance of 41.93 feet to a point, thence
4. South 06°00'13" East, a distance of 83.40 feet to a point, thence
5. South 83°59'47" West, a distance of 63.84 feet to a point, thence
6. North 56°27'26" West, a distance of 116.97 feet to a point, thence
7. North 33°32'34" East, a distance of 46.34 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT B

Phase I Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed or installed or to be acquired, constructed or installed in connection with the completion of the Town of Brookhaven Industrial Development Agency's CV Village at Coram, LLC 2014 Facility – Phase I Facility, located at 3700 Route 112, Coram, Town of Brookhaven, 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 Suffolk County.

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

Now therefor, the parties to the attached Phase I Facility Lease 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, demolish, and equip the Phase I 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 demolition, construction and equipping of the Phase I Facility shall provide:

(a) in the hiring of employees for the performance of work in acquiring, demolishing, constructing and equipping the Phase I Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, demolition, construction and equipping of the Phase I Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, demolition,

construction and equipping of the Phase I Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing, renovating and equipping the Phase I 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 and equipping of the Phase I 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

Form of Tenant Agency Compliance Agreement

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20___, is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “Agency”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the “Tenant”).

WITNESSETH

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (the “Land”), together with existing structures and improvements located thereon by CV Village at Coram, LLC, a New York limited liability company (the “Company”) and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,300 square feet of commercial space (the “Phase I Facility”), which Phase I Facility will be leased to the Company pursuant to a Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “Phase I Facility Lease Agreement”), for further sublease by the Company to and to be used by Wincoram Commons I, LLC, a New York limited liability company (the “Phase I Sublessee”); (B) Phase II will consist of the construction and equipping of five (5) buildings totaling approximately 82,000 square feet and containing an aggregate of approximately 78 additional residential units (the “Phase II Facility”), which Phase II Facility will be leased to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “Phase II Facility Lease Agreement”), by and between the Agency and the Company, for further sublease by the Company to and to be used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “Phase II Sublessee”); and (C) Phase III will consist of the construction and equipping of an approximately 13,300 square foot building to be used for retail space (the “Phase III Facility”); and together with the Phase I Facility and the Phase II Facility, the “Facility”), which Phase III Facility will be leased to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “Phase III Facility Lease Agreement”); and together with the Phase I Facility Lease Agreement and the Phase II Facility Lease Agreement, the “Lease Agreements”), by and between the Agency and the Phase III Company, for further sublease by the Company to and to be used by Wincoram Commons

Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A attached hereto (the “**Phase I Land**”) to the Agency pursuant to the terms of a certain Phase I Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase I Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase I Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase I Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-lease the Phase I Land and lease the Phase I Improvements and the Phase I Equipment to the Company pursuant to a certain Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase I Facility Lease Agreement**”), by and between the Agency and the Company;

WHEREAS, the Company has agreed to sublease the Phase I Facility to the Phase I Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase I Facility Sublease**”), by and between the Company and the Phase I Sublessee;

WHEREAS, the Phase I Sublessee has agreed to sublease a portion of the Phase I Facility (the “**Demised Premises**”) to the Tenant pursuant to a Master Lease for Commercial Space, dated as of February 1, 2014 (the “**Conifer Sublease Agreement**”), by and between the Company and the Tenant, which may be amended from time to time;

WHEREAS, in connection therewith, the Agency and the Tenant have agreed to enter into this Conifer Tenant Agency Compliance Agreement, dated as of February 1, 2014 (the “**Conifer Tenant Agency Compliance Agreement**”) whereby the Tenant will provide certain assurances to the Agency with respect to the Demised Premises.

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

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

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

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____, and in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This

Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase I Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorney's fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

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

(e) The Tenant will complete construction of any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises in accordance with the terms and provisions of the Tenant Lease Agreement.

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to the following (but without duplication of insurance provided by the Company pursuant to the Phase I Facility Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase I Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Phase I Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required hereby shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least ten (10) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional named insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Tenant as additional named insureds.

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

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1 hereof shall be applied as follows: (i) The Net Proceeds of the insurance required by Section 2.1(a) hereof shall be applied as provided in Section 7.1 of the Phase I Facility Lease Agreement, and (ii) the Net Proceeds of the insurance required by Section 2.1(b), (c) and (d) hereof shall be applied toward

extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III SPECIAL COVENANTS

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

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for 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 Demised Premises or to common areas or other portions of the Phase I Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or

employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant 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 Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises, subject to the Tenant's reasonable security provisions.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Phase I Facility not to constitute a "project" as such quoted term is defined in the Act. Without limited the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Phase I Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and shall use commercially reasonable efforts to cause any sublessee of the Tenant or

occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Phase I Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Phase I Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Phase I Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Phase I Facility or onto any other property. The Tenant shall comply with, and shall use commercially reasonable efforts to ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Phase I Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. The Tenant shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase I Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Tenant shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Tenant shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency such information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, 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 Comptroller, or any of the

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

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Phase I Facility is located (collectively, the “**Referral Agencies**”). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.8 Subleasing. In accordance with Section 862(1) of the Act, the Phase I 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 Phase I 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 Phase I Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 3.9 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Phase I Facility Lease Agreement as Schedule A.

Section 3.10 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

EXHIBIT E

MORTGAGE REQUIREMENTS

A mortgage should be granted by the Agency and the Company, or an existing mortgage may be modified and/or extended with the Agency joining in on the granting clauses and the remedy provisions and then all other covenants that would usually be from the mortgagor should come from the Company only and not the Agency. In those instances where a covenant by the Agency is required, please word the covenant as follows: "The Mortgagor agrees, having first been indemnified against any liability or expense to its satisfaction,..." Further, if the lender requires the Agency to provide any certificates or take any action, such action or provisions must be at the sole cost and expense of the Company. In addition, the mortgage must contain the Agency's standard non-recourse and hold harmless provisions set forth below. Pursuant to the granting clauses of the mortgage, the Agency will grant to the lender a mortgage lien on and a security interest in the Phase I Facility and the Agency's rights under the Phase I Facility Lease Agreement except for the Agency's Unassigned Rights (as defined below). The Agency will also enter in an assignment of rents and leases with respect to the Phase I Facility Lease Agreement except for the Agency's Unassigned Rights and also subject to the requirements herein with respect to a mortgage. All other loan documents, such as the Note, should come from the Company. The Agency will not be a party to them.

Finally, in order to preserve the Mortgage Recording Tax exemption, the mortgage should contain a provision stating that the Agency will record the mortgage or cause the mortgage to be recorded in the Suffolk County Clerk's Office. That language is also below.

Required Language:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section _____. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage of the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security

given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agency (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or Suffolk County and neither the State of New York nor Suffolk County shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section _____. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for 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 Phase I Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, renovating, equipping, installation, owning and leasing of the Phase I Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein 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 the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section ____ shall remain in full force and effect after the termination of this Mortgage 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 reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

Section _____. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section _____. Termination of Lease Agreement. Upon the Termination of the Phase I Facility Lease Agreement, for any reason whatsoever and at the sole cost and expense of the Company, the Mortgagee shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute and deliver, any documents necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4, 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase I Facility Lease Agreement, all payments under the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement.

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.

“Affiliate” means with respect to any Person, any other Person that directly or indirectly controls, is under common control with, or is controlled by such Person.

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

“Agency Documents” means the Phase I Facility Company Lease, the Phase I Facility Lease Agreement, the Phase I Facility Environmental Compliance and Indemnification Agreement, the Phase I Facility PILOT Agreement, the Phase I Facility Recapture Agreement, the Phase I Facility Agency Compliance Agreement and the Conifer Tenant Agency Compliance Agreement.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on June 19, 2013 and amended on January 15, 2014, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

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

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

“Closing Date” means February 18, 2014.

“Company” means CV Village at Coram, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Company Documents” means the Phase I Facility Bill of Sale, the Phase I Facility Company Lease, the Phase I Facility Lease Agreement, the Phase I Facility Environmental Compliance and Indemnification Agreement, the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement.

“Completion Date” means the date of completion of the Phase I Facility as certified pursuant to Section 4.3 of the Phase I Facility 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.

“Conifer” means Conifer Realty LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns

“Conifer Sublease Agreement” means the Master Lease for Commercial Space, dated as of February 1, 2014, by and between the Phase I Sublessee, as sublessor and Conifer, as sublessee.

“Conifer Tenant Agency Compliance Agreement” means the Conifer Tenant Agency Compliance Agreement, dated as of February 1, 2014, by and between the Agency and Conifer, as the same may be amended from time to time.

“Construction Period” means the period (a) beginning on the earlier of (i) the date of commencement of acquisition, demolition, construction and equipping of the Phase I Facility, which date shall not be prior to June 19, 2013 or (ii) the Closing Date, and (b) ending on the Completion Date.

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

“Facility” means, collectively the Phase I Facility, the Phase II Facility and the Phase III Facility.

“Facility Services” means all services necessary for the acquisition, demolition, construction and equipping of the Phase I Facility.

“FTE” shall have the meaning set forth in Section 8.13 hereof.

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

“Indemnified Parties” shall have the meaning set forth in Section 8.2 hereof.

“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 or the Company.

“Investor Member” means Red Stone – Fund 42 Limited Partnership.

“Land” shall have the meaning ascribed thereto in the recitals of the Phase I Facility Lease Agreement.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Phase I Facility Lease Agreement.

“Lender” means any lender making a Loan to the Company to finance in whole or in part the acquisition, remediation and development of the Phase I Facility or any portion of the Phase I Facility.

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

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

“Mortgage” means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Phase I Facility in favor of the Lender as security for such Lender’s Loan to the Company.

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

“Permitted Encumbrances” means, with respect to the Phase I Facility, (i) Phase I Facility Company Lease, (ii) exceptions to title set forth in the Title Report, (iii) the Phase I Facility Lease Agreement, (iv) the Phase I Facility Sublease, (v) 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, (vi) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vii) Liens for taxes not yet delinquent, (viii) any Mortgage granted to a Lender, (ix) approved tenants, (x) the Phase I Facility Recapture Agreement and (xi) the Conifer Sublease Agreement.

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

“Phase I Equipment” means all machinery, equipment and other personal property used and to be used in connection with Phase I Facility as described in Exhibit B to the Phase I Facility Lease Agreement.

“Phase I Facility” means collectively, the Phase I Land, the Phase I Improvements and the Phase I Equipment subleased and leased to the Company under the Phase I Facility Lease Agreement.

“Phase II Facility” shall have the meaning ascribed thereto in the recitals of the Phase I Facility Lease Agreement.

“Phase III Facility” shall have the meaning ascribed thereto in the recitals of the Phase I Facility Lease Agreement.

“Phase I Facility Agency Compliance Agreement” means the Phase I Facility Agency Compliance Agreement for the Phase I Facility, dated as of February 1, 2014, by and between the Phase I Sublessee and the Agency, as amended from time to time.

“Phase I Facility Bill of Sale” means the Phase I Facility Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the equipment, as the same may be amended from time to time.

“Phase I Facility Company Lease” means the Phase I Facility Company Lease Agreement, dated as of February 1, 2014, by the Company, as lessor, and the Agency, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Phase I Facility Environmental Compliance and Indemnification Agreement” means the Phase I Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014, by and among the Agency, the Company and the Phase I Sublessee, as amended from time to time.

“Phase I Facility PILOT Agreement” means the Phase I Facility Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2014, by and among the Company, the Phase I Sublessee and the Agency, as amended from time to time.

“Phase I Facility Lease Agreement” means the Phase I Facility Lease Agreement, dated as of February 1, 2014, by and between the Agency, as sublessor, and the Company, as

sublessee, with respect to the Phase I Facility, as the same may be amended from time to time.

“Phase I Facility Recapture Agreement” means the Phase I Facility Recapture Agreement for the Phase I Facility, dated as of February 1, 2014, by and among the Company, the Phase I Sublessee and the Agency, as amended from time to time.

“Phase I Facility Sublease Agreement” means the Sublease Agreement, dated as of February 1, 2014, by and between the Company, as sublessor and the Phase I Sublessee, as sublessee.

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

“Phase I Land” means the real property leased by the Agency to the Company pursuant to the Phase I Facility Lease Agreement and more particularly described in Exhibit A-1 attached thereto.

“Phase I Sublessee” means Wincoram Commons I, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Phase I Sublessee Documents” means the Phase I Facility Sublease Agreement, the Phase I Facility PILOT Agreement, the Phase I Facility Recapture Agreement, the Phase I Facility Environmental Compliance and Indemnification Agreement and the Conifer Sublease Agreement.

“Plans and Specifications” means the plans and specifications, if any, for the Phase I Improvements, prepared for the Company, as revised from time to time in accordance with the Phase I Facility Lease Agreement.

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

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

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

opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Recapture Event” shall have the same meaning assigned thereto in the Phase I Facility Recapture Agreement.

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

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

“State” means the State of New York.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Phase I Facility.

“Tenant Agency Compliance Agreement” means an agreement in the form attached to the Phase I Facility Lease Agreement as Exhibit D between the Agency and a commercial sublessee of the Phase I Facility.

“Title Report” means Certificate of Title No. CL110078884CO-A issued by Chicago Title Insurance Company to the Agency on February 5, 2014, and redated and recertified on the Closing Date.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

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

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase I Facility Lease Agreement and all payments due under the Phase I Facility PILOT Agreement and the Phase I Facility Recapture Agreement.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

CV VILLAGE AT CORAM, LLC

PHASE II FACILITY LEASE AGREEMENT

Dated as of February 1, 2014

Town of Brookhaven Industrial Development Agency
(CV Village at Coram, LLC 2014 Facility)

TABLE OF CONTENTS

	<u>Page No.</u>
<u>ARTICLE I DEFINITIONS</u>	3
<u>ARTICLE II REPRESENTATIONS AND COVENANTS</u>	3
<u>Section 2.1 Representations and Covenants of Agency</u>	3
<u>Section 2.2 Representations and Covenants of Company</u>	4
<u>ARTICLE III PHASE II FACILITY SITE AND TITLE INSURANCE</u>	6
<u>Section 3.1 Agreement to Convey to Agency</u>	6
<u>Section 3.2 Title Insurance</u>	6
<u>Section 3.3 Subordination of Lease Agreement</u>	6
<u>Section 3.4 Public Authorities Law Representations</u>	6
<u>ARTICLE IV ACQUISITION, DEMOLITION, CONSTRUCTION AND EQUIPPING OF PHASE II FACILITY</u>	7
<u>Section 4.1 Acquisition, Demolition, Construction and Equipping of Phase II Facility</u>	7
<u>Section 4.2 Making of Loans; Disbursement of Loan Proceeds</u>	8
<u>Section 4.3 Certificate of Completion</u>	8
<u>Section 4.4 Performance by Phase II Sublessee</u>	8
<u>Section 4.5 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties</u>	8
<u>ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS</u>	9
<u>Section 5.1 Demise of Phase II Facility</u>	9
<u>Section 5.2 Duration of Lease Term; Quiet Enjoyment</u>	9
<u>Section 5.3 Rents and Other Amounts Payable</u>	9
<u>Section 5.4 Obligations of Company Hereunder Unconditional</u>	10
<u>Section 5.5 Payment of Additional Moneys in Prepayment of Loan</u>	10
<u>Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan</u>	10
<u>ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE</u>	11
<u>Section 6.1 Maintenance and Modifications of Phase II Facility by Company</u>	11
<u>Section 6.2 Installation of Additional Equipment</u>	11
<u>Section 6.3 Taxes, Assessments and Utility Charges</u>	12
<u>Section 6.4 Insurance Required</u>	13
<u>Section 6.5 Additional Provisions Respecting Insurance</u>	14
<u>Section 6.6 Application of Net Proceeds of Insurance</u>	15
<u>Section 6.7 Right of Lender or Agency to Pay Taxes, Insurance Premiums and Other Charges</u>	16
<u>ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION</u>	16
<u>Section 7.1 Damage or Destruction of the Phase II Facility</u>	16
<u>Section 7.2 Condemnation</u>	18

Section 7.3	<u>Condemnation of Company-Owned Property</u>	20
Section 7.4	<u>Waiver of Real Property Law Section 227</u>	20
<u>ARTICLE VIII SPECIAL COVENANTS</u>		20
Section 8.1	<u>No Warranty of Condition or Suitability by Agency</u>	20
Section 8.2	<u>Hold Harmless Provisions</u>	21
Section 8.3	<u>Right to Inspect Phase II Facility</u>	22
Section 8.4	<u>Company to Maintain Its Existence</u>	22
Section 8.5	<u>Qualification in State</u>	22
Section 8.6	<u>Agreement to File Annual Statements and Provide Information</u>	22
Section 8.7	<u>Books of Record and Account; Financial Statements</u>	22
Section 8.8	<u>Compliance with Orders, Ordinances, Etc</u>	22
Section 8.9	<u>Discharge of Liens and Encumbrances</u>	24
Section 8.10	<u>Identification of Phase II Equipment</u>	25
Section 8.11	<u>Depreciation Deductions and Investment Tax Credit</u>	25
Section 8.12	<u>Employment Opportunities; Notice of Jobs</u>	25
Section 8.13	<u>Employment at the Phase II Facility</u>	25
Section 8.14	<u>Compliance with the Act</u>	26
<u>ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND</u>		
	<u>SUBLEASING</u>	26
Section 9.1	<u>Restriction on Sale of Phase II Facility; Release of Certain Land</u>	26
Section 9.2	<u>Removal of Phase II Equipment</u>	27
Section 9.3	<u>Assignment and Subleasing</u>	27
Section 9.4	<u>Mortgage and Pledge of Agency's Interest to Lender</u>	29
Section 9.5	<u>Pledge of Company's Interest to Lender</u>	29
Section 9.6	<u>Merger of Agency</u>	29
<u>ARTICLE X EVENTS OF DEFAULT AND REMEDIES</u>		29
Section 10.1	<u>Events of Default Defined</u>	29
Section 10.2	<u>Remedies on Default</u>	32
Section 10.3	<u>Remedies Cumulative</u>	33
Section 10.4	<u>Agreement to Pay Attorneys' Fees and Expenses</u>	34
Section 10.5	<u>No Additional Waiver Implied by One Waiver</u>	34
Section 10.6	<u>Certificate of No Default</u>	34
<u>ARTICLE XI EARLY TERMINATION OF LEASE AGREEMENT</u>		34
<u>OPTION IN FAVOR OF COMPANY</u>		34
Section 11.1	<u>Early Termination of Lease Agreement</u>	34
Section 11.2	<u>Conditions to Early Termination of Lease Agreement</u>	35
Section 11.3	<u>Obligation to Purchase Phase II Facility</u>	35
Section 11.4	<u>Conveyance on Purchase</u>	35
<u>ARTICLE XII MISCELLANEOUS</u>		36
Section 12.1	<u>Notices</u>	36
Section 12.2	<u>Binding Effect</u>	37

<u>Section 12.3</u>	<u>Severability</u>	37
<u>Section 12.4</u>	<u>Amendments, Changes and Modifications</u>	37
<u>Section 12.5</u>	<u>Execution of Counterparts</u>	37
<u>Section 12.6</u>	<u>Applicable Law</u>	37
<u>Section 12.7</u>	<u>List of Additional Phase II Equipment; Further Assurances</u>	37
<u>Section 12.8</u>	<u>Survival of Obligations</u>	38
<u>Section 12.9</u>	<u>References to Lender, Loan, Note, or Mortgage</u>	38
<u>Section 12.10</u>	<u>Mortgage Financing</u>	38
<u>Section 12.11</u>	<u>Table of Contents and Section Headings Not Controlling</u>	38
<u>Section 12.12</u>	<u>Waiver of Trial by Jury</u>	38
EXHIBIT A-1	Legal Description of Phase I Land	
EXHIBIT A-2	Legal Description of Phase II Land	
EXHIBIT A-3	Legal Description of Phase III Land	
EXHIBIT B	Phase II Equipment	
EXHIBIT C	Compliance with Labor Law, Executive Law and Civil Rights Law	
EXHIBIT D	Form of Tenant Agency Compliance Agreement	
EXHIBIT E	Mortgage Requirements	
SCHEDULE A	Schedule of Definitions	

THIS PHASE II FACILITY LEASE AGREEMENT, dated as of February 1, 2014 (this “**Phase II Facility Lease Agreement**”), is by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “**Agency**”), and CV VILLAGE AT CORAM, LLC, a limited liability company, organized and existing under the laws of the State of New York, having an address at 183 E. Main Street, Suite 600, Rochester, New York 14604 (the “**Company**”).

RECITALS

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

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

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

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (as more specifically set forth on Exhibits A-1, A-2, and A-3) (the “**Land**”), together with existing structures and improvements located thereon by the Company and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,020 square feet of commercial space (the “**Phase I Facility**”), which Phase I Facility will be leased to the Company pursuant to a Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase I Facility Lease Agreement**”), for further sublease by the Company to, and to be developed and used by Wincoram Commons I, LLC, a New York limited liability company (the “**Phase I Sublessee**”); (B) Phase II will consist of the

construction and equipping of five (5) buildings totaling approximately 82,000 square feet and containing an aggregate of approximately 78 additional residential units (the “**Phase II Facility**”), which Phase II Facility will be leased to the Company pursuant to this Phase II Facility Lease Agreement, for further sublease by the Company to, and to be developed and used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “**Phase II Sublessee**”); and (C) Phase III will consist of the construction and equipping of an approximately 6,000 square foot building to be used for retail space (the “**Phase III Facility**”; and together with the Phase I Facility and the Phase II Facility, the “**Facility**”), which Phase III Facility will be leased to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase III Facility Lease Agreement**”), by and between the Agency and the Phase III Company, for further sublease by the Company to, and to be developed and used by Wincoram Commons Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development, including the following as they relate to the appointment of the Company as agent of the Agency with respect to the acquisition, demolition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, demolition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, demolition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A-2 attached hereto (the “**Phase II Land**”) to the Agency pursuant to the terms of a certain Phase II Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase II Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase II Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase II Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-sublease the Phase II Land and lease the Phase II Improvements and the Phase II Equipment to the Company pursuant to this Phase II Facility Lease Agreement;

WHEREAS, the Company has agreed to sublease the Phase II Facility to the Phase II Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase II Facility Sublease**”), by and between the Company and the Phase II Sublessee;

WHEREAS, in connection therewith, the Agency and the Phase II Sublessee have agreed to enter into a Phase II Facility Agency Compliance Agreement, dated as of February 1, 2014 (the “**Phase II Facility Agency Compliance Agreement**”), whereby the Phase II Sublessee will provide certain assurances to the Agency with respect to the Phase II Facility;

WHEREAS, in order to define the Company's and the Phase II Sublessee's obligations regarding payments-in-lieu of taxes, the Agency, the Company and the Phase II Sublessee will enter into a Phase II Facility Payment in Lieu of Tax Agreement, dated as of February 1, 2014 (the "**Phase II Facility PILOT Agreement**"), by and among the Agency, the Company and the Phase II Sublessee, whereby the Company and the Phase II Sublessee agree to make certain payments-in-lieu-of-taxes to the Taxing Authorities (as defined therein);

WHEREAS, the Company and the Phase II Sublessee will enter into a Phase II Facility Recapture Agreement, dated as of February 1, 2014 (the "**Phase II Facility Recapture Agreement**"), from the Company and the Phase II Sublessee to the Agency in order to reflect the repayment of obligations of the Company and the Phase II Sublessee upon the occurrence of a Recapture Event (as defined therein);

WHEREAS, as a condition to an inducement for the Agency to enter into and perform the transactions contemplated by this Phase II Facility Lease Agreement, the Agency will require the Company and the Phase II Sublessee to enter into an Phase II Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014 (the "**Phase II Facility Environmental Compliance and Indemnification Agreement**"), by and between the Company, the Phase II Sublessee and the Agency; and

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

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 Phase II Facility Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a leasehold interest in the Phase II Land and will cause the Phase II Improvements to be constructed and the Phase II Equipment to be acquired and installed and will sublease the Phase II Facility to the Company pursuant to this Phase II Facility Lease Agreement, all for the Public Purposes of the State.

(c) By resolution dated June 19, 2013, 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 Phase II Facility, the Phase II Facility would not have a “significant impact” or “significant effect” on the environment within the meaning of the SEQRA Act.

(d) Neither the execution and delivery of any of the Agency 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 Agency 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 the Act, any other law or ordinance of the State or any political subdivision thereof, or of the Agency’s Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency 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 Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

(f) The Agency has been induced to enter into this Phase II Facility Lease Agreement by the undertaking of the Company to utilize the Phase II Facility in the Town of Brookhaven, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purpose of this Phase II Facility Lease Agreement.

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

(a) The Company is a limited liability company, organized and existing under the laws of the State of 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 Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Phase II Facility and the design, acquisition, demolition, construction, equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase II Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(e) The Company will complete or has completed demolition, construction and equipping of the Phase II Facility substantially in accordance with the terms and provisions of the Plans and Specifications.

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

(g) The Company hereby represents to the Agency that the Agency's involvement with the Phase II Facility (i) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State nor an abandonment of one or more plants of the Company located in the State, or (ii)(A) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State, or (B) is reasonably necessary to preserve the competitive position of the Company in its industry.

(h) The Company will sublease and lease the Phase II Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will cause any

future commercial tenant or tenants of portions of the Phase II Facility to execute and deliver to the Agency, a Tenant Agency Compliance Agreement, in the form attached hereto as Exhibit D, prior to the occupancy of the Phase II Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

(i) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Director, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(g) and 9.3 of this Phase II Facility Lease Agreement. Without limiting the generality of the foregoing, the Company will provide the Agency with the information and materials described in Section 8.6 hereof.

ARTICLE III PHASE II FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) leasehold interest in the Phase II Land and the Phase II Improvements, and (ii) lien-free title to the Phase II Equipment, in each case except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to the Phase II Equipment and a leasehold interest in the Phase II Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Company has obtained or will obtain (i) a leasehold title insurance policy for the benefit of the Agency insuring leasehold title to the Phase II Land and the Phase II Improvements, and (ii) if the Phase II Facility is mortgaged by the Agency and the Company to a Lender, a mortgage insurance policy for the benefit of the Lender insuring the Lien of the Mortgage on the Phase II Land and the Phase II Improvements, in each case in an amount as agreed to by the parties, and in each case except for Permitted Encumbrances.

Section 3.3 Subordination of Lease Agreement. This Phase II Facility Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage or Mortgages which may now or hereafter be granted by the Agency and the Company on the Phase II Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof and the Agency and or the Company will deliver to any such lender any such agreements as are necessary to confirm same.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Phase II Facility and the interest therein to be conveyed by this Phase II Facility Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Phase II Facility and the leasehold interests therein are securing the financial obligations of the Company. The Phase II Facility and the leasehold interests therein secure the obligations of the Company to the Agency under the Phase II Facility PILOT Agreement, the Phase II Facility Recapture Agreement, the Phase II Facility Environmental Compliance and Indemnification Agreement and this Phase II Facility Lease Agreement, including the Company's obligation to acquire,

demolish, construct, equip and maintain the Phase II Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency, all to the extent set forth in this Phase II Facility Lease Agreement.

ARTICLE IV
ACQUISITION, DEMOLITION, CONSTRUCTION, RENOVATION AND EQUIPPING
OF PHASE II FACILITY

Section 4.1 Acquisition, Demolition, Construction and Equipping of Phase II Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, demolish, construct and equip the Phase II Facility substantially in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time with the written approval of the Agency and any Lender (if required by such Lender) making a Loan for the financing or refinancing of the acquisition, demolition, construction and equipping of the Phase II Facility, which approval shall not be unreasonably withheld or delayed.

(c) Except as set forth in Section 6.2 hereof, title to or leasehold interest in all materials, equipment, machinery and other items of Property incorporated or installed in the Phase II Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title 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 and the Phase II Sublessee its true and lawful agents, and the Company hereby accepts such agency (i) to acquire, demolish, construct and equip the Phase II Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Phase II Improvements and acquiring and installing the Phase II Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the demolition and construction of the Phase II Improvements and the acquisition and installation of the Phase II Equipment from funds made available therefor in accordance with this Phase II Facility Lease Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the demolition and construction of the Phase II Improvements and the acquisition and installation of the Phase II Equipment, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company and the Phase II Sublessee from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

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

Section 4.2 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition, demolition, construction and equipping of the Phase II Facility or to reimburse the Company for the cost of acquiring, demolishing, constructing, and equipping the Phase II Facility. Proceeds of such Loan or Loans shall be disbursed by such Lender or Lenders in accordance with the provisions of the Mortgage or Mortgages or other related documentation applicable to such Loan or Loans.

Section 4.3 Certificate of Completion. To establish the Completion Date, the Company shall deliver to the Agency, (i) a certificate signed by an Authorized Representative of the Company: (a) stating that the acquisition, demolition, construction and equipping of the Phase II Facility has been completed substantially in accordance with the Plans and Specifications therefor; and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition, demolition, construction and equipping has been made or provided for; and (ii) such certificates as may be reasonably satisfactory to the Agency including, without limitation, a final or temporary certificate of occupancy, as applicable. The Company agrees to endeavor to complete the acquisition, demolition, construction and equipping of the Phase II Facility on or before February 29, 2016, or on such date as shall be agreed to by both the Company and the Agency.

Section 4.4 Performance by Phase II Sublessee. The parties agree that any and all of the obligations of the Company under the Lease Agreement may be satisfied and fulfilled by the Phase II Sublessee and that performance by the Phase II Sublessee shall be deemed to be performance by the Company.

Section 4.5 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Phase II 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 their expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any

other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company, and to take all action necessary to effect the substitution of the Company, as the case may be, for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other Person shall be paid to the Company.

ARTICLE V
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Phase II Facility. The Agency hereby subleases the Phase II Land as more particularly described in Exhibit A-2 attached hereto and subleases and leases the Phase II Improvements and the Phase II Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Phase II Facility from the Agency upon the terms and conditions of this Phase II Facility Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Phase II Facility (subject to Sections 3.3, 8.3 and 10.2 hereof), and the subleasehold or leasehold estate created hereby shall commence, on the Closing Date and the Company shall accept possession of the Phase II Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the subleasehold and leasehold estate created hereby shall terminate at 11:59 p.m. on November 30, 2036 or on such earlier date as may be permitted by Section 11.1 and 10.2 hereof (the "**Lease Term**").

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Phase II Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Phase II Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the Agency's fee in the amount of \$133,908.00 (equal to the administrative fee of \$133,352.00 plus the public hearing notice costs of \$556.00) for the Facility (which shall include the Phase I Facility, the Phase II Facility and the Phase III Facility). The Company shall pay basic rent for the Facility One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000.00 for the Facility on the Closing Date and on or before January 1 of each year or within ten (10) days of receipt of demand therefore by the Agency, commencing on January 1, 2015 and continuing through the term of the Lease Agreement.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of receipt of demand therefore, an amount equal to the sum of the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency's leasing, subleasing or financing of the Phase II Facility in accordance with this Phase II Facility Lease Agreement, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents in accordance therewith, the payment of which expenses is not otherwise provided for under this Phase II Facility Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency that has been invoiced to the Company on or prior to the date hereof.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or (b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional.

(a) The obligations of the Company to make the payments required in Section 5.3 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 agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Phase II Facility Lease Agreement or (iii) terminate this Phase II Facility Lease Agreement for any cause whatsoever, except as provided in the provisions of this Phase II Facility Lease Agreement.

(b) Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Phase II Facility Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 8.3, Article X and Article XI hereof, take, suffer or permit any action which will adversely affect, or create any defect in its leasehold interest in the Phase II Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company, in the Company's sole discretion.

Section 5.5 Reserved. Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event any Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof: (i) all references in this Phase II Facility

Lease Agreement to such Lender, such Note and such Mortgage applicable to such Loan shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Phase II Facility from the date of such payment until the earlier of (A) the scheduled expiration of the Lease Term and (B) the date the Company enters into another Note and Mortgage, on all of the terms and conditions hereof, or the Company may, at its option, require the Agency to convey the Phase II Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment, the Company, at its sole cost and expense, shall obtain and cause to be recorded or filed appropriate discharges or releases of the applicable Mortgage and any other security interest relating to the Phase II Facility or this Phase II Facility Lease Agreement.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Phase II Facility by Company.

(a) During the Lease Term, the Company shall not abandon the Phase II Facility or cause or permit anyone under the control of the Company to cause any material waste to the Phase II Facility. During the Lease Term, the Company shall not remove any material part of the Phase II Facility outside of the jurisdiction of the Agency (except as necessary in the ordinary course of business of the Company) and shall (i) keep the Phase II Facility or cause the Phase II Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make or cause to be made all necessary repairs and replacements to the Phase II Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Phase II Facility in a sound and commercially reasonable manner.

(b) With the written consent of the Agency, which consent shall not be unreasonably withheld, and the Lender, if any (if required by such Lender) the Company from time to time may make any structural additions, modifications or improvements to the Phase II Facility or any part thereof, provided such actions do not materially and adversely affect the structural integrity of the Phase II Facility. All such additions, modifications or improvements made by the Company during the Lease Term shall become a part of the Phase II Facility and subject to the Phase II Facility Company Lease and this Phase II Facility Lease Agreement, as applicable. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency an interest in or title to such property.

Section 6.2 Installation of Additional Phase II Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Phase II Facility (which may be attached or affixed to the Phase II Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Phase II Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Phase II Facility, provided that any such

removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred and is then continuing; or (ii) if any such removal shall adversely affect the structural integrity of the Phase II Facility or materially impair the overall operating efficiency of the Phase II Facility for the purposes for which it is intended, and provided further, that if any damage to the Phase II Facility is occasioned by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the exemptions from real property taxes as provided under the Phase II Facility PILOT Agreement and the sales tax letter delivered by the Agency to the Company, the Company agrees to pay, or cause to be paid, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof: (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Phase II Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Phase II Facility or any part or component thereof, or the rental or sale of the Phase II Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Phase II 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 Phase II Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement; 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 Phase II Facility Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

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

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts, which such obligation shall survive the expiration or termination of this Phase II Facility Lease Agreement.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency and the Lender, if any, official receipts of the appropriate taxing

authorities or other proof reasonably satisfactory to the Agency and any such Lender evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, or caused to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase II Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

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

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Phase II 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 and any Lender that no portion of the Phase II Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4 (a)

and (e) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of any Lender and shall provide for payment to any Lender of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency and any Lender of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and any Lender as additional insureds. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to any Lender pursuant to the Mortgage, and the Company consents thereto. Upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation. Nothing contained in this Phase II Facility Lease Agreement is intended to limit or modify any insurance requirements set forth in any Mortgage or other Loan Document executed in connection therewith.

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

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) subject to the terms of any Mortgage or other Loan Document, the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) 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 Lender or Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, payments in lieu of taxes pursuant to the Phase II Facility PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Phase II 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 Phase II Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency or Lender, if any, may pay or cause to be paid such tax, payments in lieu of taxes pursuant to the Phase II Facility PILOT Agreement, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency or any Lender until at least ten (10) days shall have elapsed since notice shall have been given by any Lender to the Agency, with a simultaneous copy of such notice being given to the Company (or by the Agency to any Lender and the Company), and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (iii), (iv), and (v) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Phase II Facility Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency or any Lender shall affect or impair any rights of the Agency hereunder or of the Lender, if any, under the Mortgage arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency or any Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or any Lender pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency or any Lender at one percent (1%) in excess of the rate set forth in any applicable Note, and such amount, together with such interest, shall become additional indebtedness secured by such applicable Mortgage.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Phase II Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase II Facility Lease Agreement or the Phase II

Facility PILOT Agreement (whether or not the Phase II Facility is replaced, repaired, rebuilt, restored or relocated);

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

(iv) except as set forth in paragraph (e) below, upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders to the extent provided in the applicable Mortgage, and except as otherwise provided in Section 11.1 and subsection (d) hereof and in the applicable Mortgage, applied by such Lender or Lenders pursuant to the terms of the Mortgage or Mortgages or other Loan Documents; and

(v) if the Phase II Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Phase II Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions either of Sections 11.2, 11.3 and 11.4 hereof or of Section 7.1(g) hereof shall apply.

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

(i) the Phase II Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase II Facility that it does not constitute a "project" as such term is defined in the Act;

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

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

(iv) any other conditions any Lender may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Phase II 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 Phase II Facility as if the same were specifically provided herein and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete the work, or cause the work to be completed, and pay from its own moneys, or cause to be paid by such other

party as may be obligated for payment pursuant to the terms of the Phase II Facility Lease Agreement that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys or any other person, and shall automatically become a part of the Phase II Facility as if the same were specifically provided herein.

(d) If the Company shall exercise its option to terminate this Phase II Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, subject to the terms of any Mortgage or other Loan Documents. If an Event of Default hereunder shall have occurred and will be continuing and the Agency or any Lender shall have exercised their respective remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof, subject to the terms of any Mortgage or other Loan Documents.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) Except upon the occurrence of an Event of Default, the Company, with the consent of the Agency shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) and (e) hereof on behalf of the Agency and on its own behalf.

(g) If the Phase II Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, the Phase II Facility may be reconveyed to the Company subject to any Mortgage.

Section 7.2 Condemnation.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase II Facility Lease Agreement or the Phase II Facility PILOT Agreement (whether or not the Phase II Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities are acquired);

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

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company and the Company shall promptly replace, repair, rebuild, restore or relocate the Phase II Facility or acquire Substitute Facilities, or cause the Phase II Facility to be replaced, repaired, rebuilt or restored, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders pursuant to the terms of the applicable Mortgage except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by such Lender or Lenders pursuant to the terms of the applicable Mortgage; and

(v) if the Phase II Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Phase II Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions of either Sections 11.2, 11.3 and 11.4 hereof or of Section 7.2(g) hereof shall apply.

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

(i) the Phase II Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase II Facility that it does not constitute a "project" as such term is defined in the Act;

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

(iii) following completion of any such replacement, repair, rebuilding or restoration, the Phase II Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances

(iv) any other conditions the Agency or any Lender may reasonably impose pursuant to the applicable Mortgage.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Phase II 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 Phase II Facility as if the same were specifically described herein. Any Net Proceeds of a Condemnation not used to repair, replace, rebuild, restore, or relocate the Phase II Facility shall belong to the Company. In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, relocation or acquisition of Substitute Facilities, the Company shall nonetheless complete, or

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

(d) If the Company shall exercise its option to terminate this Phase II Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender, if any, shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall be retained by the Company.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Phase II Facility has been substantially condemned and is not replaced, repaired, rebuilt, restored or relocated and a Substitute Facility is not acquired, renovated and equipped, the Phase II Facility may be reconveyed to the Company subject to any Mortgage.

(g) Except upon the occurrence of an Event of Default, the Company with the prior written consent of the Agency shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Agency and on its own behalf.

Section 7.3 Condemnation of Company-Owned Property. Subject to the terms of any Mortgage or other Loan Documents, 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 Phase II 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 Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE PHASE II FACILITY OR THAT THE PHASE II FACILITY IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (collectively, the “**Indemnified Parties**”) shall not be liable for and agrees to defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all (i) liability for 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 Phase II 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 Phase II Facility, or (ii) liability arising from or expense incurred by the Agency’s acquisition, demolition, construction, equipping, leasing, and subleasing of the Phase II Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) of this Phase II Facility Lease Agreement, all claims arising from the breach of any of the Company’s covenants contained in Section 8.8 of this Phase II Facility 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 Phase II Facility Lease Agreement (including without limitation this Section) or any of the other Agency Documents) and, any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, 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 any of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Phase II Facility 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 Phase II Facility 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, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by any of the Indemnified Parties, relating to the enforcement of the provisions herein specified.

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

Section 8.3 Right to Inspect Phase II Facility. The Agency and its duly authorized agents of either of them shall have the right at all reasonable times on reasonable notice to inspect the Phase II Facility.

Section 8.4 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will maintain its existence, and will not dissolve, liquidate or otherwise dispose of substantially all of its assets, will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

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

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 an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase II Facility in compliance with Section 874(8) of the New York State General Municipal Law (the "GML"). The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Company further agrees whenever requested by the Agency 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 Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all commercial sublessees at the Phase II Facility to comply with the requirements of this Section 8.6 by requiring such sublessees to enter into Tenant Agency Compliance Agreements.

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

Section 8.8 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and shall use commercially reasonable efforts to cause any sublessee, tenant or occupant of the Phase II Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter

may be applicable to the Phase II Facility or any part thereof, or to the acquisition, demolition, construction and equipping thereof, or to any use, manner of use or condition thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Phase II Facility or any part thereof, and of any companies or associations insuring the premises.

(b) The Company shall keep or cause the Phase II Facility to be kept free of Hazardous Substances other than Hazardous Substances used in the ordinary course of the Company's operations in compliance with all applicable federal, state and local laws or regulations. Without limiting the foregoing, the Company shall not cause or permit the Phase II Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Phase II Facility or onto any other property in violation of all applicable laws and regulations. The Company shall comply with and shall use commercially reasonable efforts to ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) conduct and complete, or cause to be conducted and completed, all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances in violation of all applicable laws and regulations, on, from, or affecting the Phase II Facility (A) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, and (B) in accordance with the applicable orders and directives of all federal, state, and local governmental authorities; and (ii) defend, indemnify, and hold harmless the Indemnified Parties, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, reasonable costs, or reasonable expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release, or threatened release of any Hazardous Substances at the Phase II Facility which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances in violation of all applicable laws and regulations, and/or (D) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event any Mortgage is foreclosed by any Lender or the Company tenders a deed in lieu of foreclosure to any Lender, the Company shall deliver the Phase II Facility to such Lender free of any and all Hazardous Substances in violation of all applicable laws and regulations so that the condition of the Phase II Facility shall conform with all applicable federal, state and local laws, ordinances,

rules or regulations affecting the Phase II Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law, and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section 8.8, the Agency and any Lender each retain the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Agency and any Lender shall select their own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) hereof, 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 or any Lender shall notify the Company that by nonpayment of any such item or items, the lien of the applicable Mortgage may be materially

endangered or the Phase II 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 a bond, in form and substance satisfactory to the Agency and any Lender, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency and any Lender to protect their respective interests. Mechanics' Liens shall be discharged or bonded within sixty (60) days of the filing or perfection thereof.

Section 8.10 Identification of Phase II Equipment. All Phase II Equipment which is or may become the Property of the Agency pursuant to the provisions of this Phase II Facility Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Phase II Equipment and other Property of whatever nature affixed or attached to the Phase II Land or used or to be used by the Company in connection with the Phase II Land or the Phase II Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of renovation of the Phase II Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Phase II Facility Lease Agreement and such Phase II Equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Phase II Facility and to any investment credit with respect to any part of the Phase II Facility.

Section 8.12 Employment Opportunities; Notice of Jobs. The Company covenants and agrees, and shall request any and all sublessees to covenant and agree, that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Phase II 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 Phase II Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall request any and all sublessees to agree, that they will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.13 Employment at the Phase II Facility. The Company covenants at all times to maintain or cause the Phase II Sublessee to maintain at the Phase II Facility two (2) full time equivalent employees calculated on the basis of 35 hours per week ("**FTE**") as of December 31, 2018 (including the FTEs of all tenants located at the Phase II Facility) (except as such number may be revised pursuant to an agreement between the Company and the Agency) and thereafter throughout the Lease Term who are employees of the Company or any subsidiary or affiliates of the Company or tenants of the Company or of the Phase II Sublessee located at the Phase II Facility whose place of employment or workplace is located

at the Phase II Facility; provided that failure to comply with the foregoing shall not be a breach of the foregoing covenant or an Event of a Default hereunder as long as such failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issuers or industry wide conditions. It is further provided that the Company and the Phase II Sublessee may not actually provide the FTEs at the Phase II Facility, but rather shall sublease the Phase II Facility to tenants, provided that (a) the Company and/or the Phase II Sublessee use all reasonable efforts to lease up the commercial portion of the Phase II Facility, and (b) include provisions in all commercial subleases requiring any tenant to comply with the provisions of the Phase II Facility Lease Agreement applicable to them.

Section 8.14 Compliance with the Act. The Company hereby agrees to comply with Section 875 of the GML. The Company further agrees that the exemption of sales and use taxes provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to Section 4.1(d) hereof is subject to recapture of benefits pursuant to Section 875 and the Phase II Facility Recapture Agreement.

ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency, during the Lease Term, shall not sell, convey, transfer, lease, encumber or otherwise dispose of the Phase II Facility or any part thereof, or any of its rights under this Phase II Facility Lease Agreement, without the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned and any Lender.

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

(c) Except as provided in Section 9.3 hereof, nothing herein shall limit the Company's right to sell and/or mortgage its interests herein and the Agency shall, at the sole

cost and expense of the Company, sell, convey, transfer, lease, assign, encumber, pledge or otherwise assist the Company in disposing of the Phase II Facility, any part thereof or any interest therein. In such case, the Agency shall execute, acknowledge when appropriate, and deliver from time to time at the request of the Company all such instruments and documents as in the opinion of the Company may be desirable, necessary or required to effectuate the transaction contemplated and otherwise cooperate to effectuate and carry out the intent and purpose of the contemplated transaction. In the event the Company desires to take any of the foregoing actions, the Agency agrees to execute and delivery an estoppel certificate certifying such items as may reasonably be required by any such purchaser, assignee, mortgagee or other potential lienor.

(d) No conveyance of any part of, or interest in, the Phase II Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Phase II Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase II Facility PILOT Agreement.

Section 9.2 Removal of Phase II 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 Phase II Equipment. In any instance where the Company determines that any item of Phase II Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of any Lender, if required by the Mortgage, if any, may remove such items from the Phase II Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, if any, provided that such removal will not materially impair the operation of the Phase II Facility for the purpose for which it is intended or change the nature of the Phase II Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Phase II Equipment. The Company shall pay any costs (including counsel fees) of the Agency, and all of its own expenses, incurred in transferring title to any item of Phase II Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Phase II Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Phase II Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase II Facility PILOT Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Phase II Facility Lease Agreement may not be assigned, in whole or in part, and the Phase II Facility may not be further subleased, in whole or in part (except pursuant to the Phase II Facility Sublease Agreement), without the prior written consent of the Agency for any commercial sublease, in each instance, which consent shall not be unreasonably withheld, conditioned or delayed but shall be subject to the dates of the Agency's Board meetings, and which consent may be fully and effectively given by the

execution and delivery of a Tenant Agency Compliance Agreement, in substantially the form attached hereto as Exhibit D, by an Authorized Representative of the Agency. Any assignment or commercial sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder, unless the Agency consents to such release;
- (ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Phase II Facility Lease Agreement or any Mortgage shall be adversely affected thereby;
- (v) the Phase II Facility shall continue to constitute a “project” as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Phase II Facility to be used in violation of the Act and no assignment or sublease shall cause the Phase II Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;
- (vi) any commercial(as opposed to residential) sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit D.

Notwithstanding any of the foregoing to the contrary, the foregoing requirements shall not apply to any residential sublease.

(b) If any Lender or the Agency shall so reasonably 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 cost shall furnish any Lender and the Agency with opinions, in form and substance satisfactory to any Lender and the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) Notwithstanding anything to the contrary in Section 9.3(a) hereof, the Company may assign this Phase II Facility Lease Agreement, without the consent of the Agency, but with prior written notice to the Agency, to any entity in which the Company owns a controlling interest.

(d) In accordance with Section 862(1) of the Act, the Phase II 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 Phase II 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 Phase II Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 9.4 Mortgage and Pledge of Agency's Interest to Lender. The Agency shall, at the request of and at the sole cost and expense of the Company, (i) mortgage its interest in the Phase II Facility, and (ii) pledge and assign its rights to and interest in this Phase II Facility Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Phase II Facility Lease Agreement (other than Unassigned Rights), to any Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its exclusive benefit.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Phase II Facility Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 9.6 Merger of Agency. Nothing contained in this Phase II Facility Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of the leasehold interest in the Phase II Facility, to the entire Phase II Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Phase II Facility and the legal right to continue the tax benefits (e.g., real estate tax, sales and use tax and mortgage recording tax exemptions) contemplated to be provided to the Company in accordance with the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Phase II Facility Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Phase II Facility shall be transferred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be “Events of Default” under this Phase II Facility Lease Agreement:

(i) the failure by the Company to pay or cause to be paid on the date due, or within the applicable grace period, the amount specified to be paid pursuant to Section 5.3 (a) and (b) hereof;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(f) and (g), 6.3, 6.4, 6.5, 8.2, 8.4, 8.6, 8.8, 8.13, 8.14 and 9.3 hereof, which is not cured within thirty (30) days after written notice;

(iii) the failure by the Company to pay or cause to be paid on the dates due, or within the applicable grace period, the amounts specified to be paid pursuant to the Phase II Facility PILOT Agreement or the Phase II Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;

(iv) the occurrence and continuation of a Recapture Event under the Phase II Facility Recapture Agreement;

(v) the invalidity, illegality or unenforceability of the Phase II Facility PILOT Agreement, or the failure due to an action or inaction on the part of the Company to observe and perform any material covenant contained in the Phase II Facility PILOT Agreement or the Phase II Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;

(vi) any material representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading when made in any material respect;

(vii) the failure by the Company to observe and perform any material covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or any Lender, or, if such covenant is capable of cure but cannot be cured within such thirty (30) days period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute such cure to completion;

(viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days after notice to the Company any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding

under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for thirty (30) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

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

(x) an Event of Default under any other documents executed and delivered in connection with any Mortgage shall have occurred and be continuing beyond any applicable notice and cure period;

(xi) the invalidity, illegality or unenforceability of any Mortgage or any other documents executed and delivered in connection with such Mortgage;

(xii) an Event of Default or a default by the Company under the Phase II Facility Environmental Compliance and Indemnification Agreement shall have occurred and be continuing beyond any applicable notice and cure period;

(xiii) sale or closure of the Phase II Facility and/or departure of the Company from the Town of Brookhaven, except as permitted under Article IX hereof; or

(xiv) a default by any sublessee under its respective Tenant Agency Compliance Agreement; provided, however, that any such default shall not constitute an Event of Default hereunder so long as the Company is proceeding diligently to cure such default or the Company has terminated, or is using commercially reasonable efforts to terminate, the sublease agreement with such defaulting sublessee and has evicted, or is using commercially reasonable efforts to evict, such defaulting sublessee.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Phase II Facility Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Phase II Facility Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the

effect thereof. The term “force majeure” as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) Notwithstanding anything to the contrary contained herein, any Member of the Phase II Sublessee shall have the right, but not the obligation to, cure a default hereunder, and the Agency agrees to accept such cure as if provided by the Company.

(d) The parties hereto mutually agree that upon the occurrence and continuation of an Event of Default, the Lender shall be entitled to notice at the same time and in the same manner as the Company. The Lender, after expiration of the Company’s cure period for any Event of Default described in Section 10.1 hereof, shall have an additional (i) ten (10) days to cure monetary defaults; and (ii) thirty (30) days to cure non-monetary defaults capable of being cured. Performance of any cure by the Lender shall be accepted as performance by the Company.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the Phase II Facility PILOT Agreement, (C) all amounts due and owing under the Phase II Facility Recapture Agreement; and (D) all other payments due under this Phase II Facility Lease Agreement and the Phase II Facility PILOT Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(viii) hereof shall have occurred, such installments of rent and other payments due under this Phase II Facility Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency or any Lender;

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

(iii) upon the occurrence and continuation of an Event of Default under the Mortgage, and only at the direction of the Lender, terminate, on ten (10) days written notice to the Company, the Lease Term and all rights of the Company under this Phase II Facility Lease Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Phase II Facility and lease the Phase II Facility to the Lender or the designee of the Lender for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease; or

(iv) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement, to secure possession of the Phase II Facility and to enforce the obligations, agreements and covenants of the Company under this Phase II Facility Lease Agreement and under the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement.

(b) No action taken pursuant to this Section 10.2 (including repossession of the Phase II Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under the Phase II Facility PILOT Agreement or the Phase II Facility Recapture Agreement, except that upon reconveyance of the Phase II Facility to the Company pursuant to Section 10.2(a)(ii), the Phase II Facility PILOT Agreement shall terminate.

(c) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and to any Lender to enter the Phase II Facility with agents or representatives of the Agency and any Lender to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Phase II Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or any Lender 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 Phase II Facility 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 and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency and any Lender, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Phase II Facility 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 this Phase II Facility Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

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

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year within thirty (30) days after delivery of a written request therefor from the Agency, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Phase II Facility Lease Agreement and no Event of Default exists under this Phase II Facility Lease Agreement, the Phase II Facility PILOT Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.6 hereof to the extent such information is not otherwise deliverable on a different date.

ARTICLE XI
EARLY TERMINATION OF LEASE AGREEMENT

OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Phase II Facility Lease Agreement at any time, whether a default exists hereunder or not, and for any reason whatsoever, upon filing with the Agency and any Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 11.2 hereof; provided however, that if a Mortgage on the Phase II Facility is in effect, then the Company shall not exercise, and the Agency shall not accept the Company's exercise of, its option to terminate this Phase II Facility Lease Agreement without the prior written consent of the Lender.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Phase II Facility Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make, or cause to be made, the following payments:

- (a) To the Agency or the Taxing Authorities (as such term is defined in the Phase II Facility PILOT Agreement) as appropriate pursuant to the Phase II Facility PILOT Agreement: all amounts sufficient to pay all due and payable, current and past due payments in lieu of taxes under the Phase II Facility PILOT Agreement, as of the date of conveyance.
- (b) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.
- (c) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

All such amounts shall be supported by statement and invoices with reasonable detail evidencing the amounts due.

Section 11.3 Obligation to Purchase Phase II Facility. Upon expiration or termination of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Phase II Facility from the Agency, and the Agency shall sell the Phase II Facility to the Company, for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to the Phase II Facility PILOT Agreement through the date upon which this Phase II Facility Lease Agreement terminates or expires. The Company shall accept surrender of the Phase II Facility by giving written notice to the Agency and to any Lender (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to accept surrender of the Phase II Facility, and (ii) fixing the date of closing such surrender of the Phase II Facility, which shall be the date on which this Phase II Facility Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any surrender of the Phase II Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the consideration for surrender, deliver and request the Lender, if any, to deliver to the Company all necessary documents (i) to convey to the Company, by a leasehold estate, or, title to the Property being surrendered, as such Property exists, subject only to the following: (A) any Liens to which the leasehold interest or title to such Property was subject when conveyed to the Agency, (B) 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, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Phase II Facility Lease Agreement or arising out of an Event of Default hereunder, (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Phase II Facility (but not including any Unassigned Rights); and (iii) (A) to release the Agency from any Mortgage and any

other Loan Documents to which it is a party, and (B) if applicable, to discharge and release the Mortgage and any other security interest held by such Lender. The Agency shall also execute and deliver a Bill of Sale relating to the Phase II Equipment and Phase II Improvements on the Phase II Land and any documents reasonably necessary to discharge or record this Phase II Facility Lease Agreement or any memorandum thereof. Upon the conveyance of the Phase II Facility by the Agency to the Company pursuant to this Article XI, the Phase II Facility PILOT Agreement shall terminate.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, or via reputable overnight delivery service, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Executive Director

To the Company:

CV Village at Coram, LLC
183 E. Main Street, Suite 600
Rochester, New York 14604
Attention: Allen Handelman, Vice President

With a copy to:

Red Stone-Fund 42 Limited Partnership
c/o Red Stone Equity Partners, LLC
200 Public Square, Suite 1550
Cleveland, Ohio 44114

And:

Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Attention: Roger W. Holmes, Esq.

And:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553

Attention: Daniel P. Deegan, Esq.

To Community Development Trust:

Community Development Trust
1350 Broadway, Suite 700
New York, NY 10018
Attention: Brian Gallagher

With a copy to:

Ballard Spahr, LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
Attention: Mary Jo George, Esq.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall deliver written instructions to the Agency and the Company with the address of such Lender.

Section 12.2 Binding Effect. This Phase II Facility Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Phase II Facility 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 12.4 Amendments, Changes and Modifications. This Phase II Facility Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and consented thereto by any Lender.

Section 12.5 Execution of Counterparts. This Phase II Facility 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 12.6 Applicable Law. This Phase II Facility Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Phase II Equipment; Further Assurances.

(a) Upon the Completion Date with respect to the Phase II Facility and the installation of all of the Phase II Equipment therein, the Company shall prepare and deliver to the Agency a schedule listing all of the Phase II Equipment not previously described in this Phase II Facility 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 equipment not theretofore previously described herein or in the aforesaid schedule.

(b) 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 Phase II Facility Lease Agreement.

Section 12.8 Survival of Obligations. This Phase II Facility Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 5.3, and all indemnities shall survive the foregoing and any termination or expiration of this Phase II Facility Lease Agreement.

Section 12.9 References to Lender, Loan, Note, or Mortgage. Any references herein to Lender, Loan, Note or Mortgage or other similar words, whether in the singular or the plural, are in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

Section 12.10 Mortgage FinancingIn order to finance or refinance certain costs of the acquisition, demolition, construction and equipping of the Phase II Facility, the Company may decide to utilize a lender or lenders, as may be determined, to finance, refinance, modify and/or extend an amount as determined by the Company on the date of delivery of this Phase II Facility Lease Agreement or thereafter, including existing loans (the “**Loan**”). The Agency agrees to cooperate with the Company in connection with such financing or refinancing, including without limitation granting one or more mortgages on the Phase II Facility, inclusive of any existing mortgages, executing such other documents required by the Company’s lender(s) and complying with the terms and provisions of such mortgage(s) and other documents, provided that such mortgage and other documents shall meet all the requirements set forth on Exhibit E attached hereto and made a part hereof. The Agency and the Company agree that this Phase II Facility Lease Agreement shall be subject and subordinate to the Loan and the term and provisions of all documents evidencing and securing the Loan (collectively, the “**Loan Documents**”). The Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Loan Documents.

Section 12.11 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Phase II Facility Lease 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 Phase II Facility Lease Agreement.

Section 12.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Phase II Facility Lease Agreement or the Phase II

Facility or any matters whatsoever arising out of or in any way connected with this Phase II Facility Lease Agreement.

IN WITNESS WHEREOF, the Agency and the Company have caused this Phase II Facility Lease Agreement to be executed in their respective names by their duly authorized officers, all as of February 1, 2014.

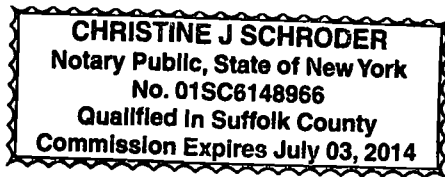
**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

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

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

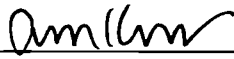
On the 1st day of February in the year 2014, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Christine J Schroder
Notary Public



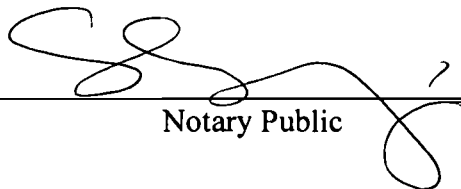
CV VILLAGE AT CORAM, LLC

By: Conifer Realty, LLC, its sole member

By 
Name: Andrew I. Crossed
Title: Executive Vice President

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

On the 14th day of February in the year 2014, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

S STURMAN JENNINGS
Notary Public State of New York
No 021F6096835
Qualified in Monroe County
Commission Expires August 11, 2015

EXHIBIT A-1

Legal Description of Phase I Land

SCHEDULE A

PHASE 1 LEGAL DESCRIPTION

PHASE 1 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-029.004 & p/o 29.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point on the southerly boundary line of Farmers Avenue (not-open), said point of beginning being North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 435.6 feet from a point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue;

Thence from said point of beginning, North 85°07'07" East along said southerly boundary line a distance of 316.94 feet to the southeasterly terminus of Farmers Avenue (not-open);

Thence North 26°50'17" East along the easterly terminus of Farmers Avenue (not open), then lands now or formerly of Avalon Bay Communities, Inc. on the west and through the lands of CV Village at Coram, LLC., a distance of 182.93 feet to a point;

Thence continuing through the lands of CV Village at Coram, LLC. the following twenty seven (27) courses and distances;

1. South 56°27'26" East, a distance of 22.27 feet to a point, thence
2. North 33°32'34" East, a distance of 46.85 feet to a point, thence
3. South 56°27'26" East, a distance of 202.50 feet to a point, thence
4. North 33°32'34" East, a distance of 25.31 feet to a point, thence
5. South 56°27'26" East, a distance of 75.61 feet to a point, thence
6. South 33°32'34" West, a distance of 38.70 feet to a point, thence
7. South 56°27'26" East, a distance of 61.29 feet to a point, thence
8. South 33°32'34" West, a distance of 81.11 feet to a point, thence
9. South 56°27'26" East, a distance of 77.01 feet to a point, thence
10. South 33°32'34" West, a distance of 46.34 feet to a point, thence
11. South 56°27'26" East, a distance of 116.97 feet to a point, thence
12. North 83°59'47" East, a distance of 63.84 feet to a point, thence
13. North 06°00'13" West, a distance of 83.40 feet to a point, thence
14. South 83°59'47" West, a distance of 41.93 feet to a point, thence
15. North 25°40'54" East, a distance of 68.91 feet to a point, thence
16. North 56°27'26" West, a distance of 39.56 feet to a point, thence

17. North 33°31'54" East, a distance of 22.07 feet to a point, thence
18. North 05°18'13" West, a distance of 42.36 feet to a point, thence
19. North 29°39'59" East, a distance of 32.15 feet to a point, thence
20. North 17°51'00" West, a distance of 84.24 feet to a point, thence
21. North 70°48'45" West, a distance of 36.26 feet to a point, thence
22. North 11°24'25" West, a distance of 154.94 feet to a point, thence
23. North 49°15'49" West, a distance of 257.25 feet to a point, thence
24. North 71°17'22" West, a distance of 79.21 feet to a point, thence
25. North 85°27'01" West, a distance of 79.70 feet to a point, thence
26. South 47°47'14" West, a distance of 34.42 feet to a point, thence
27. South 26°56'56" West, a distance of 180.00 feet to a point on the easterly boundary of lands of the State of New York (recharge basin);

Thence northerly along said boundary, the following two (2) courses and distances;

1. North 2°27'42" East, a distance of 109.24 feet to a point, thence
2. North 12°37'19" West, a distance of 229.07 feet to point on the southerly boundary of lands of Selective Coram, Inc.

Thence easterly and northerly along said boundary, the following two (2) courses and distances;

1. North 80°30'17" East, a distance of 84.95 feet to a point, thence
2. North 7°01'27" East, a distance of 200.00 feet to point on the southerly boundary line Middle country Road (N.Y.S. Rt. 25);

Thence Easterly along the southerly boundary line of Middle Country Road (N.Y.S. Rt. 25) along an arc of a curve to the left having a radius of 756.78 feet a distance of 104.41 (calc) 104.36 (deed) to a point;

Thence southerly along the westerly boundary line of lands of Smithtown Rte. 111 Properties, LLC. and the easterly line of a 20' wide Right of Way, South 9°30'17" West, a distance of 333.55 feet to a point;

Thence easterly and northerly along said lands of Smithtown Rte. 111 Properties, LLC. the following three (3) courses and distances;

1. South 67°48'03" East, a distance of 136.67 feet to a point, thence
2. North 12°01'17" East, a distance of 178.67 feet to a point, thence
3. North 40°28'07" East, a distance of 27.05 feet to lands of Partnership of Mirabelli & Brandt;

Thence, easterly along said boundary and then lands of M K L V Ventures, Inc. the following three (3) courses and distances

1. South 66°51'13" East, a distance of 75.63 feet to a point, thence
2. South 43°02'23" East, a distance of 229.94 feet to point, thence

3. North 83°11'27" East, a distance of 50.00 feet to the westerly boundary line of lands of 3712 Route 112, LLC.

Thence southerly and easterly along said boundary line the following two (2) courses and distances;

- 1. South 6°48'33" East, a distance of 50.00 feet to point, thence**
- 2. North 83°11'27" East, a distance of 100.00 feet to point on the westerly boundary line of the Port Jefferson-Patchogue Road (N.Y.S. RT. 112);**

Thence, southerly along said boundary the following two (2) courses and distances

- 1. South 6°56'13" East, a distance of 276.87 feet to a point, thence**
- 2. South 5°57'33" East, a distance of 483.17 feet to point on the northerly boundary line of lands of Milap Enterprises Inc.;**

Thence westerly along said boundary line, then the northerly terminus of Coram Avenue and then other lands of Milap Enterprises Inc. the following two (2) courses and distances;

- 1. South 82°17'07" West, a distance of 918.53 feet to a point, thence**
- 2. South 85°07'07" West, a distance of 104.53 to a point on the easterly boundary of lands now or formerly of Anne M. Wilberg revocable Trust;**

Thence northerly along lands now or formerly of Anne M. Wilberg revocable Trust and then lands now or formerly of Caroline Giovanniello & Anthony Giovanniello North 4°52'53" West, a distance of 400.00 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-2

Legal Description of Phase II Land

SCHEDULE A

PHASE 2 LEGAL DESCRIPTION

PHASE 2 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at an angle point on the easterly boundary line of lands now or formerly of Avalon Bay Communities, Inc., said point of beginning being the following two courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

1. North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet
2. North 26°50'17" East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 165.11 feet

Thence from said point of beginning North 50°48'13" West, a distance of 124.89 feet to point on the easterly boundary of lands of the State of New York (recharge basin)

Thence northerly along the easterly boundary of lands of the State of New York (recharge basin) North 2°27'42" East, a distance of 69.37 to a point

Thence through the lands of CV Village at Coram, LLC. the following twenty five (25) courses and distances;

1. North 26°56'56" East, a distance of 180.00 feet to a point, thence
2. North 47°47'14" East, a distance of 34.42 feet to a point, thence
3. South 85°27'01" East, a distance of 79.70 feet to a point, thence
4. South 71°17'22" East, a distance of 79.21 feet to a point, thence
5. South 49°15'49" East, a distance of 257.25 feet to a point, thence
6. South 11°24'25" East, a distance of 154.94 feet to a point, thence
7. South 70°48'45" East, a distance of 36.26 feet to a point, thence
8. South 17°51'00" East, a distance of 84.24 feet to a point, thence
9. South 29°39'59" West, a distance of 32.15 feet to a point, thence
10. South 05°18'13" East, a distance of 42.36 feet to a point, thence

11. South 33°31'54" West, a distance of 22.07 feet to a point, thence
12. South 56°27'26" East, a distance of 39.56 feet to a point, thence
13. South 25°40'54" West, a distance of 68.91 feet to a point, thence
14. North 56°27'26" West, a distance of 80.77 feet to a point, thence
15. South 33°32'34" West, a distance of 31.92 feet to a point, thence
16. North 56°27'26" West, a distance of 77.01 feet to a point, thence
17. North 33°32'34" East, a distance of 81.11 feet to a point, thence
18. North 56°27'26" West, a distance of 61.29 feet to a point, thence
19. North 33°32'34" East, a distance of 38.70 feet to a point, thence
20. North 56°27'26" West, a distance of 75.61 feet to a point, thence
21. South 33°32'34" West, a distance of 25.31 feet to a point, thence
22. North 56°27'26" West, a distance of 202.50 feet to a point, thence
23. South 33°32'34" West, a distance of 46.85 feet to a point, thence
24. North 56°27'26" West, a distance of 22.27 feet to a point, thence
25. South 26°50'17" West, a distance of 17.82 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-3

Legal Description of Phase III Land

PHASE 3 LEGAL DESCRIPTION

PHASE 3 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point within the lands of CV Village at Coram, LLC, said point of beginning being the following courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet

North 26°50'17" East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 182.93 feet

Thence through the lands of CV Village at Coram, LLC the following nine (9) courses and distances

1. South 56°27'26" East, a distance of 22.27 feet to a point, thence
2. North 33°32'34" East, a distance of 46.85 feet to a point, thence
3. South 56°27'26" East, a distance of 202.50 feet to a point, thence
4. North 33°32'34" East, a distance of 25.31 feet to a point, thence
5. South 56°27'26" East, a distance of 75.61 feet to a point, thence
6. South 33°32'34" West, a distance of 38.70 feet to a point, thence
7. South 56°27'26" East, a distance of 61.29 feet to a point, thence
8. South 33°32'34" West, a distance of 81.11 feet to a point, thence
9. South 56°27'26" East, a distance of 77.01 feet to a the point or place of beginning;

Thence from said point of beginning through the lands of CV Village at Coram, LLC. the following seven (7) courses and distances;

1. North 33°32'34" East, a distance of 31.92 feet to a point, thence
2. South 56°27'26" East, a distance of 80.77 feet to a point, thence
3. North 83°59'47" East, a distance of 41.93 feet to a point, thence
4. South 06°00'13" East, a distance of 83.40 feet to a point, thence
5. South 83°59'47" West, a distance of 63.84 feet to a point, thence
6. North 56°27'26" West, a distance of 116.97 feet to a point, thence
7. North 33°32'34" East, a distance of 46.34 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT B

Phase II Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed or installed or to be acquired, constructed or installed in connection with the completion of the Town of Brookhaven Industrial Development Agency's CV Village at Coram, LLC 2014 Facility – Phase II Facility, located at 3700 Route 112, Coram, Town of Brookhaven, 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 Suffolk County.

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

Now therefor, the parties to the attached Phase II Facility Lease 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, demolish, and equip the Phase II 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 demolition, construction and equipping of the Phase II Facility shall provide:

(a) in the hiring of employees for the performance of work in acquiring, demolishing, constructing and equipping the Phase II Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, demolition, construction and equipping of the Phase II Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, demolition,

construction and equipping of the Phase II Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing, renovating and equipping the Phase II 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 and equipping of the Phase II 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

Form of Tenant Agency Compliance Agreement

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20__ , is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “Agency”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the “Tenant”).

WITNESSETH

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (the “Land”), together with existing structures and improvements located thereon by CV Village at Coram, LLC, a New York limited liability company (the “Company”) and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,300 square feet of commercial space (the “Phase I Facility”), which Phase I Facility will be leased to the Company pursuant to a Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “Phase I Facility Lease Agreement”), for further sublease by the Company to and to be used by Wincoram Commons I, LLC, a New York limited liability company (the “Phase I Sublessee”); (B) Phase II will consist of the construction and equipping of five (5) buildings totaling approximately 82,000 square feet and containing an aggregate of approximately 78 additional residential units (the “Phase II Facility”), which Phase II Facility will be leased to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “Phase II Facility Lease Agreement”), by and between the Agency and the Company, for further sublease by the Company to and to be used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “Phase II Sublessee”); and (C) Phase III will consist of the construction and equipping of an approximately 13,300 square foot building to be used for retail space (the “Phase III Facility”; and together with the Phase I Facility and the Phase II Facility, the “Facility”), which Phase III Facility will be leased to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “Phase III Facility Lease Agreement”; and together with the Phase I Facility Lease Agreement and the Phase I Facility Lease Agreement, the “Lease Agreements”), by and between the Agency and the Phase III Company, for further sublease by the Company to and to be used by Wincoram Commons

Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A attached hereto (the “**Phase II Land**”) to the Agency pursuant to the terms of a certain Phase II Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase II Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase II Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase II Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-lease the Phase II Land and lease the Phase II Improvements and the Phase II Equipment to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase II Facility Lease Agreement**”), by and between the Agency and the Company;

WHEREAS, the Company has agreed to sublease the Phase II Facility to the Phase II Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase II Facility Sublease**”), by and between the Company and the Phase II Sublessee;

WHEREAS, the Phase II Sublessee has agreed to sublease a portion of the Phase II Facility (the “**Demised Premises**”) to the Tenant pursuant to a [Sub-Sublease Agreement], dated [____], 20[___] (the “**Sublease Agreement**”), by and between the Company and the Tenant, which may be amended from time to time;

WHEREAS, in connection therewith, the Agency and the tenant have agreed to enter into this Tenant Agency Compliance Agreement, dated as of [____], 20[___] (the “**Tenant Agency Compliance Agreement**”), whereby the Tenant will provide certain assurances to the Agency with respect to the Demised Premises.

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

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

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

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____, and in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase II Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorney's fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

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

(e) The Tenant will complete construction of any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises in accordance with the terms and provisions of the Tenant Lease Agreement.

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to the following (but without duplication of insurance provided by the Company pursuant to the Phase II Facility Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase II Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Phase II Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

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

- (iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined

single limit for personal injury, including bodily injury or death, and property damage).

- (iv) Excess “umbrella” liability providing liability Insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required hereby shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least ten (10) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional named insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Tenant as additional named insureds.

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

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

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III
SPECIAL COVENANTS

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

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for 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 Demised Premises or to common areas or other portions of the Phase II Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to

the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant 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 Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises, subject to the Tenant's reasonable security provisions.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Phase II Facility not to constitute a "project" as such quoted term is defined in the Act. Without limited the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Phase II Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and shall use commercially reasonable efforts to cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments,

decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Phase II Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Phase II Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Phase II Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Phase II Facility or onto any other property. The Tenant shall comply with, and shall use commercially reasonable efforts to ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Phase II Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. The Tenant shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase II Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Tenant shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Tenant shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency such information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, 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

Comptroller, or any of the Agency Documents or Tenant Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Phase II Facility is located (collectively, the “**Referral Agencies**”). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.8 Subleasing. In accordance with Section 862(1) of the Act, the Phase II 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 Phase II 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 Phase II Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 3.9 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Phase II Facility Lease Agreement as Schedule A.

Section 3.10 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

EXHIBIT E

MORTGAGE REQUIREMENTS

A mortgage should be granted by the Agency and the Company, or an existing mortgage may be modified and/or extended with the Agency joining in on the granting clauses and the remedy provisions and then all other covenants that would usually be from the mortgagor should come from the Company only and not the Agency. In those instances where a covenant by the Agency is required, please word the covenant as follows: "The Mortgagor agrees, having first been indemnified against any liability or expense to its satisfaction,...". Further, if the lender requires the Agency to provide any certificates or take any action, such action or provisions must be at the sole cost and expense of the Company. In addition, the mortgage must contain the Agency's standard non-recourse and hold harmless provisions set forth below. Pursuant to the granting clauses of the mortgage, the Agency will grant to the lender a mortgage lien on and a security interest in the Phase II Facility and the Agency's rights under the Phase II Facility Lease Agreement except for the Agency's Unassigned Rights (as defined below). The Agency will also enter in an assignment of rents and leases with respect to the Phase II Facility Lease Agreement except for the Agency's Unassigned Rights and also subject to the requirements herein with respect to a mortgage. All other loan documents, such as the Note, should come from the Company. The Agency will not be a party to them.

Finally, in order to preserve the Mortgage Recording Tax exemption, the mortgage should contain a provision stating that the Agency will record the mortgage or cause the mortgage to be recorded in the Suffolk County Clerk's Office. That language is also below.

Required Language:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section ____ . No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage of the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the

security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agency (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or Suffolk County and neither the State of New York nor Suffolk County shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section _____. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for 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 Phase II Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, renovating, equipping, installation, owning and leasing of the Phase II Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein 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 the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section ____ shall remain in full force and effect after the termination of this Mortgage 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 reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

Section _____. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section _____. Termination of Lease Agreement. Upon the Termination of the Phase II Facility Lease Agreement, for any reason whatsoever and at the sole cost and expense of the Company, the Mortgagee shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute and deliver, any documents necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4, 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase II Facility Lease Agreement, all payments under the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement.

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.

“Affiliate” means with respect to any Person, any other Person that directly or indirectly controls, is under common control with, or is controlled by such Person.

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

“Agency Documents” means the Phase II Facility Company Lease, the Phase II Facility Lease Agreement, the Phase II Facility Environmental Compliance and Indemnification Agreement, the Phase II Facility PILOT Agreement, the Phase II Facility Recapture Agreement and the Phase II Facility Agency Compliance Agreement.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on June 19, 2013 and amended on January 15, 2014, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

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

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

“Closing Date” means February 18, 2014.

“Company” means CV Village at Coram, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Company Documents” means the Phase II Facility Bill of Sale, the Phase II Facility Company Lease, the Phase II Facility Lease Agreement, the Phase II Facility Environmental Compliance and Indemnification Agreement, the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement.

“Completion Date” means the date of completion of the Phase II Facility as certified pursuant to Section 4.2 of the Phase II Facility 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 the period (a) beginning on the earlier of (i) the date of commencement of acquisition, demolition, construction and equipping of the Phase II Facility, which date shall not be prior to June 19, 2013 or (ii) the Closing Date, and (b) ending on the Completion Date.

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

“Facility” means, collectively the Phase I Facility, the Phase II Facility and the Phase III Facility.

“Facility Services” means all services necessary for the acquisition, demolition, construction and equipping of the Phase II Facility.

“FTE” shall have the meaning set forth in Section 8.13 hereof.

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

“Indemnified Parties” shall have the meaning set forth in Section 8.2 hereof.

“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 or the Company.

“Land” shall have the meaning ascribed thereto in the recitals of the Phase II Facility Lease Agreement.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Phase II Facility Lease Agreement.

“Lender” means any lender making a Loan to the Company to finance in whole or in part the acquisition, remediation and development of the Phase II Facility or any portion of the Phase II Facility.

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

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

“Member” means Community Development Corporation of Long Island, Inc. and Conifer Realty, LLC.

“Mortgage” means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Phase II Facility in favor of the Lender as security for such Lender’s Loan to the Company.

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

“Permitted Encumbrances” means, with respect to the Phase II Facility, (i) Phase II Facility Company Lease, (ii) exceptions to title set forth in the Title Report, (iii) the Phase II Facility Lease Agreement, (iv) the Phase II Facility Sublease, (v) 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, (vi) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vii) Liens for taxes not yet delinquent, (viii) any Mortgage granted to a Lender, (ix) approved tenants and (x) the Phase II Facility Recapture Agreement.

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

“Phase II Equipment” means all machinery, equipment and other personal property used and to be used in connection with Phase II Facility as described in Exhibit B to the Phase II Facility Lease Agreement.

“Phase I Facility” shall have the meaning ascribed thereto in the recitals of the Phase II Facility Lease Agreement.

“Phase II Facility” means collectively, the Phase II Land, the Phase II Improvements and the Phase II Equipment subleased and leased to the Company under the Phase II Facility Lease Agreement.

“Phase III Facility” shall have the meaning ascribed thereto in the recitals of the Phase II Facility Lease Agreement.

“Phase II Facility Agency Compliance Agreement” means the Phase II Facility Agency Compliance Agreement for the Phase II Facility, dated as of February 1, 2014, by and between the Phase II Sublessee and the Agency, as amended from time to time.

“Phase II Facility Bill of Sale” means the Phase II Facility Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the equipment, as the same may be amended from time to time.

“Phase II Facility Company Lease” means the Phase II Facility Company Lease Agreement, dated as of February 1, 2014, by the Company, as lessor, and the Agency, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Phase II Facility Environmental Compliance and Indemnification Agreement” means the Phase II Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014, by and among the Agency, the Company and the Phase II Sublessee, as amended from time to time.

“Phase II Facility PILOT Agreement” means the Phase II Facility Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2014, by and among the Company, the Phase II Sublessee and the Agency, as amended from time to time.

“Phase II Facility Lease Agreement” means the Phase II Facility Lease Agreement, dated as of February 1, 2014, by and between the Agency, as sublessor, and the Company, as sublessee, with respect to the Phase II Facility, as the same may be amended from time to time.

“Phase II Facility Recapture Agreement” means the Phase II Facility Recapture Agreement for the Phase II Facility, dated as of February 1, 2014, by and among the Company, the Phase II Sublessee and the Agency, as amended from time to time.

“Phase II Facility Sublease Agreement” means the Sublease Agreement, dated as of February 1, 2014, by and between the Company, as sublessor and the Phase II Sublessee, as sublessee.

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

“Phase II Land” means the real property leased by the Agency to the Company pursuant to the Phase II Facility Lease Agreement and more particularly described in Exhibit A-2 attached thereto.

“Phase II Sublessee” means Wincoram Commons I, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Phase II Sublessee Documents” means the Phase II Facility Sublease Agreement, the Phase II Facility PILOT Agreement, the Phase II Facility Recapture Agreement and the Phase II Facility Environmental Compliance and Indemnification Agreement.

“Plans and Specifications” means the plans and specifications, if any, for the Phase II Improvements, prepared for the Company, as revised from time to time in accordance with the Phase II Facility Lease Agreement.

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

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

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

“Recapture Event” shall have the same meaning assigned thereto in the Phase II Facility Recapture Agreement.

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

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

“State” means the State of New York.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Phase II Facility.

“Tenant Agency Compliance Agreement” means an agreement in the form attached to the Phase II Facility Lease Agreement as Exhibit D between the Agency and a commercial sublessee of the Phase II Facility.

“Title Report” means Certificate of Title No. CL110078884CO-B issued by Chicago Title Insurance Company to the Agency on February 5, 2014, and redated and recertified on the Closing Date.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

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

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase II Facility Lease Agreement and all payments due under the Phase II Facility PILOT Agreement and the Phase II Facility Recapture Agreement.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

CV VILLAGE AT CORAM, LLC

PHASE III FACILITY LEASE AGREEMENT

Dated as of February 1, 2014

Town of Brookhaven Industrial Development Agency
(CV Village at Coram, LLC 2014 Facility)

TABLE OF CONTENTS

	<u>Page No.</u>
<u>ARTICLE I DEFINITIONS</u>	3
<u>ARTICLE II REPRESENTATIONS AND COVENANTS</u>	3
<u>Section 2.1 Representations and Covenants of Agency</u>	3
<u>Section 2.2 Representations and Covenants of Company</u>	4
<u>ARTICLE III PHASE III FACILITY SITE AND TITLE INSURANCE</u>	6
<u>Section 3.1 Agreement to Convey to Agency</u>	6
<u>Section 3.2 Title Insurance</u>	6
<u>Section 3.3 Subordination of Lease Agreement</u>	6
<u>Section 3.4 Public Authorities Law Representations</u>	6
<u>ARTICLE IV ACQUISITION, DEMOLITION, CONSTRUCTION AND</u> <u>EQUIPPING OF PHASE III FACILITY</u>	7
<u>Section 4.1 Acquisition, Demolition, Construction and Equipping of Phase III Facility</u>	7
<u>Section 4.2 Making of Loans; Disbursement of Loan Proceeds</u>	8
<u>Section 4.3 Certificate of Completion</u>	8
<u>Section 4.4 Performance by Phase III Sublessee</u>	8
<u>Section 4.5 Remedies to Be Pursued Against Contractors, Subcontractors,</u> <u>Materialmen and Their Sureties</u>	8
<u>ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS</u>	9
<u>Section 5.1 Demise of Phase III Facility</u>	9
<u>Section 5.2 Duration of Lease Term; Quiet Enjoyment</u>	9
<u>Section 5.3 Rents and Other Amounts Payable</u>	9
<u>Section 5.4 Obligations of Company Hereunder Unconditional</u>	10
<u>Section 5.5 Payment of Additional Moneys in Prepayment of Loan</u>	11
<u>Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan</u>	11
<u>ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE</u>	11
<u>Section 6.1 Maintenance and Modifications of Phase III Facility by Company</u>	11
<u>Section 6.2 Installation of Additional Equipment</u>	12
<u>Section 6.3 Taxes, Assessments and Utility Charges</u>	12
<u>Section 6.4 Insurance Required</u>	13
<u>Section 6.5 Additional Provisions Respecting Insurance</u>	15
<u>Section 6.6 Application of Net Proceeds of Insurance</u>	16
<u>Section 6.7 Right of Lender or Agency to Pay Taxes, Insurance Premiums and</u> <u>Other Charges</u>	16
<u>ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION</u>	17
<u>Section 7.1 Damage or Destruction of the Phase III Facility</u>	17
<u>Section 7.2 Condemnation</u>	18
<u>Section 7.3 Condemnation of Company-Owned Property</u>	20

Section 7.4	<u>Waiver of Real Property Law Section 227</u>	21
<u>ARTICLE VIII SPECIAL COVENANTS</u>		21
Section 8.1	<u>No Warranty of Condition or Suitability by Agency</u>	21
Section 8.2	<u>Hold Harmless Provisions</u>	21
Section 8.3	<u>Right to Inspect Phase III Facility</u>	22
Section 8.4	<u>Company to Maintain Its Existence</u>	22
Section 8.5	<u>Qualification in State</u>	22
Section 8.6	<u>Agreement to File Annual Statements and Provide Information</u>	22
Section 8.7	<u>Books of Record and Account; Financial Statements</u>	23
Section 8.8	<u>Compliance with Orders, Ordinances, Etc</u>	23
Section 8.9	<u>Discharge of Liens and Encumbrances</u>	25
Section 8.10	<u>Identification of Phase III Equipment</u>	25
Section 8.11	<u>Depreciation Deductions and Investment Tax Credit</u>	25
Section 8.12	<u>Employment Opportunities; Notice of Jobs</u>	25
Section 8.13	<u>Employment at the Phase III Facility</u>	26
Section 8.14	<u>Compliance with the Act</u>	26
<u>ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND</u>		
<u>SUBLEASING</u>		26
Section 9.1	<u>Restriction on Sale of Phase III Facility; Release of Certain Land</u>	26
Section 9.2	<u>Removal of Phase III Equipment</u>	27
Section 9.3	<u>Assignment and Subleasing</u>	28
Section 9.4	<u>Mortgage and Pledge of Agency's Interest to Lender</u>	29
Section 9.5	<u>Pledge of Company's Interest to Lender</u>	29
Section 9.6	<u>Merger of Agency</u>	29
<u>ARTICLE X EVENTS OF DEFAULT AND REMEDIES</u>		30
Section 10.1	<u>Events of Default Defined</u>	30
Section 10.2	<u>Remedies on Default</u>	32
Section 10.3	<u>Remedies Cumulative</u>	34
Section 10.4	<u>Agreement to Pay Attorneys' Fees and Expenses</u>	34
Section 10.5	<u>No Additional Waiver Implied by One Waiver</u>	34
Section 10.6	<u>Certificate of No Default</u>	34
<u>ARTICLE XI EARLY TERMINATION OF LEASE AGREEMENT</u>		34
<u>OPTION IN FAVOR OF COMPANY</u>		34
Section 11.1	<u>Early Termination of Lease Agreement</u>	35
Section 11.2	<u>Conditions to Early Termination of Lease Agreement</u>	35
Section 11.3	<u>Obligation to Purchase Phase III Facility</u>	35
Section 11.4	<u>Conveyance on Purchase</u>	35
<u>ARTICLE XII MISCELLANEOUS</u>		36
Section 12.1	<u>Notices</u>	36
Section 12.2	<u>Binding Effect</u>	37
Section 12.3	<u>Severability</u>	37
Section 12.4	<u>Amendments, Changes and Modifications</u>	37

<u>Section 12.5</u>	<u>Execution of Counterparts.</u>	37
<u>Section 12.6</u>	<u>Applicable Law.</u>	38
<u>Section 12.7</u>	<u>List of Additional Phase III Equipment; Further Assurances.</u>	38
<u>Section 12.8</u>	<u>Survival of Obligations.</u>	38
<u>Section 12.9</u>	<u>References to Lender, Loan, Note, or Mortgage.</u>	38
<u>Section 12.10</u>	<u>Mortgage Financing</u>	38
<u>Section 12.11</u>	<u>Table of Contents and Section Headings Not Controlling.</u>	38
<u>Section 12.12</u>	<u>Waiver of Trial by Jury.</u>	39

EXHIBIT A-1	Legal Description of Phase I Land
EXHIBIT A-2	Legal Description of Phase II Land
EXHIBIT A-3	Legal Description of Phase III Land
EXHIBIT B	Phase III Equipment
EXHIBIT C	Compliance with Labor Law, Executive Law and Civil Rights Law
EXHIBIT D	Form of Tenant Agency Compliance Agreement
EXHIBIT E	Mortgage Requirements
SCHEDULE A	Schedule of Definitions

THIS PHASE III FACILITY LEASE AGREEMENT, dated as of February 1, 2014 (this “**Phase III Facility Lease Agreement**”), is by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “**Agency**”), and CV VILLAGE AT CORAM, LLC, a limited liability company, organized and existing under the laws of the State of New York, having an address at 183 E. Main Street, Suite 600, Rochester, New York 14604 (the “**Company**”).

RECITALS

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

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

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

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (as more specifically set forth on Exhibits A-1, A-2, and A-3) (the “**Land**”), together with existing structures and improvements located thereon by the Company and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,020 square feet of commercial space (the “**Phase I Facility**”), which Phase I Facility will be leased to the Company pursuant to a certain Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase I Facility Lease Agreement**”), by and between the Agency and the Company for further sublease by the Company to, and to be developed and used by Wincoram Commons I, LLC, a New York limited liability company

(the “**Phase I Sublessee**”); (B) Phase II will consist of the construction and equipping of five (5) buildings totaling approximately 82,000 square feet and containing an aggregate of approximately 78 additional residential units (the “**Phase II Facility**”), which Phase II Facility will be leased to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase II Facility Lease Agreement**”), by and between the Agency and the Company, for further sublease by the Company to, and to be developed and used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “**Phase II Sublessee**”); and (C) Phase III will consist of the construction and equipping of an approximately 6,000 square foot building to be used for retail space (the “**Phase III Facility**”; and together with the Phase I Facility and the Phase II Facility, the “**Facility**”), which Phase III Facility will be leased to the Company pursuant to this Phase III Facility Lease Agreement, for further sublease by the Company to, and to be developed and used by Wincoram Commons Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development, including the following as they relate to the appointment of the Company as agent of the Agency with respect to the acquisition, demolition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, demolition, construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, demolition, construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A-3 attached hereto (the “**Phase III Land**”) to the Agency pursuant to the terms of a certain Phase III Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase III Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase III Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase III Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-lease the Phase III Land and lease the Phase III Improvements and the Phase III Equipment to the Company pursuant to this Phase III Facility Lease Agreement;

WHEREAS, the Company has agreed to sublease the Phase III Facility to the Phase III Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase III Facility Sublease**”), by and between the Company and the Phase III Sublessee;

WHEREAS, in connection therewith, the Agency and the Phase III Sublessee have agreed to enter into a Phase III Facility Agency Compliance Agreement, dated as of February

1, 2014 (the “**Phase III Facility Agency Compliance Agreement**”), whereby the Phase III Sublessee will provide certain assurances to the Agency with respect to the Phase III Facility;

WHEREAS, in order to define the Company’s and the Phase III Sublessee’s obligations regarding payments-in-lieu of taxes, the Agency, the Company and the Phase III Sublessee will enter into a Phase III Facility Payment in Lieu of Tax Agreement, dated as of February 1, 2014 (the “**Phase III Facility PILOT Agreement**”), by and among the Agency, the Company and the Phase III Sublessee, whereby the Company and the Phase III Sublessee agree to make certain payments-in-lieu-of-taxes to the Taxing Authorities (as defined therein);

WHEREAS, the Company and the Phase III Sublessee will enter into a Phase III Facility Recapture Agreement, dated as of February 1, 2014 (the “**Phase III Facility Recapture Agreement**”), from the Company and the Phase III Sublessee to the Agency in order to reflect the repayment of obligations of the Company and the Phase III Sublessee upon the occurrence of a Recapture Event (as defined therein);

WHEREAS, as a condition to an inducement for the Agency to enter into and perform the transactions contemplated by this Phase III Facility Lease Agreement, the Agency will require the Company and the Phase III Sublessee to enter into an Phase III Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014 (the “**Phase III Facility Environmental Compliance and Indemnification Agreement**”), by and between the Company, the Phase III Sublessee and the Agency; and

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

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 Phase III Facility Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

(b) The Agency will acquire a leasehold interest in the Phase III Land and will cause the Phase III Improvements to be constructed and the Phase III Equipment to be acquired and installed and will sublease the Phase III Facility to the Company pursuant to this Phase III Facility Lease Agreement, all for the Public Purposes of the State.

(c) By resolution dated June 19, 2013, 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 Phase III Facility, the Phase III Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQRA Act.

(d) Neither the execution and delivery of any of the Agency 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 Agency 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 the Act, any other law or ordinance of the State or any political subdivision thereof, or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency 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 Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

(f) The Agency has been induced to enter into this Phase III Facility Lease Agreement by the undertaking of the Company to utilize the Phase III Facility in the Town of Brookhaven, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purpose of this Phase III Facility Lease Agreement.

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

(a) The Company is a limited liability company, organized and existing under the laws of the State of 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 Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Phase III Facility and the design, acquisition, demolition, construction, equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase III Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(e) The Company will complete or has completed demolition, construction and equipping of the Phase III Facility substantially in accordance with the terms and provisions of the Plans and Specifications.

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

(g) The Company hereby represents to the Agency that the Agency's involvement with the Phase III Facility (i) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State nor an abandonment of one or more plants of the Company located in the State, or (ii)(A) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the

State, or (B) is reasonably necessary to preserve the competitive position of the Company in its industry.

(h) The Company will sublease and lease the Phase III Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will cause any future commercial tenant or tenants of portions of the Phase III Facility to execute and deliver to the Agency, a Tenant Agency Compliance Agreement, in the form attached hereto as Exhibit D, prior to the occupancy of the Phase III Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

(i) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Director, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(g) and 9.3 of this Phase III Facility Lease Agreement. Without limiting the generality of the foregoing, the Company will provide the Agency with the information and materials described in Section 8.6 hereof.

ARTICLE III PHASE III FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) leasehold interest in the Phase III Land and the Phase III Improvements, and (ii) lien-free title to the Phase III Equipment, in each case except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to the Phase III Equipment and a leasehold interest in the Phase III Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Company has obtained or will obtain (i) a leasehold title insurance policy for the benefit of the Agency insuring leasehold title to the Phase III Land and the Phase III Improvements, and (ii) if the Phase III Facility is mortgaged by the Agency and the Company to a Lender, a mortgage insurance policy for the benefit of the Lender insuring the Lien of the Mortgage on the Phase III Land and the Phase III Improvements, in each case in an amount as agreed to by the parties, and in each case except for Permitted Encumbrances.

Section 3.3 Subordination of Lease Agreement. This Phase III Facility Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage or Mortgages which may now or hereafter be granted by the Agency and the Company on the Phase III Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof and the Agency and or the Company will deliver to any such lender any such agreements as are necessary to confirm same.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Phase III Facility and the interest therein to be conveyed by this Phase III Facility Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Phase III Facility and the leasehold

interests therein are securing the financial obligations of the Company. The Phase III Facility and the leasehold interests therein secure the obligations of the Company to the Agency under the Phase III Facility PILOT Agreement, the Phase III Facility Recapture Agreement, the Phase III Facility Environmental Compliance and Indemnification Agreement and this Phase III Facility Lease Agreement, including the Company's obligation to acquire, demolish, construct, equip and maintain the Phase III Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency, all to the extent set forth in this Phase III Facility Lease Agreement.

ARTICLE IV
ACQUISITION, DEMOLITION, CONSTRUCTION, RENOVATION AND EQUIPPING
OF PHASE III FACILITY

Section 4.1 Acquisition, Demolition, Construction and Equipping of Phase III Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, demolish, construct and equip the Phase III Facility substantially in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time with the written approval of the Agency and any Lender (if required by such Lender) making a Loan for the financing or refinancing of the acquisition, demolition, construction and equipping of the Phase III Facility, which approval shall not be unreasonably withheld or delayed.

(c) Except as set forth in Section 6.2 hereof, title to or leasehold interest in all materials, equipment, machinery and other items of Property incorporated or installed in the Phase III Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title 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 and the Phase III Sublessee its true and lawful agents, and the Company hereby accepts such agency (i) to acquire, demolish, construct and equip the Phase III Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Phase III Improvements and acquiring and installing the Phase III Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the demolition and construction of the Phase III Improvements and the acquisition and installation of the Phase III Equipment from funds made available therefor in accordance with this Phase III Facility Lease Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the demolition and construction of the Phase III Improvements and the acquisition and

installation of the Phase III Equipment, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company and the Phase III Sublessee from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

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

Section 4.2 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition, demolition, construction and equipping of the Phase III Facility or to reimburse the Company for the cost of acquiring, demolishing, constructing, and equipping the Phase III Facility. Proceeds of such Loan or Loans shall be disbursed by such Lender or Lenders in accordance with the provisions of the Mortgage or Mortgages or other related documentation applicable to such Loan or Loans.

Section 4.3 Certificate of Completion. To establish the Completion Date, the Company shall deliver to the Agency, (i) a certificate signed by an Authorized Representative of the Company: (a) stating that the acquisition, demolition, construction and equipping of the Phase III Facility has been completed substantially in accordance with the Plans and Specifications therefor; and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition, demolition, construction and equipping has been made or provided for; and (ii) such certificates as may be reasonably satisfactory to the Agency including, without limitation, a final or temporary certificate of occupancy, as applicable. The Company agrees to endeavor to complete the acquisition, demolition, construction and equipping of the Phase III Facility on or before December 31, 2017 or on such date as shall be agreed to by both the Company and the Agency.

Section 4.4 Performance by Phase III Sublessee. The parties agree that any and all of the obligations of the Company under the Lease Agreement may be satisfied and fulfilled by the Phase III Sublessee and that performance by the Phase III Sublessee shall be deemed to be performance by the Company.

Section 4.5 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with

the Phase III 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 their expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company, and to take all action necessary to effect the substitution of the Company, as the case may be, for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other Person shall be paid to the Company.

ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Phase III Facility. The Agency hereby subleases the Phase III Land as more particularly described in Exhibit A-3 attached hereto and subleases and leases the Phase III Improvements and the Phase III Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Phase III Facility from the Agency upon the terms and conditions of this Phase III Facility Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Phase III Facility (subject to Sections 3.3, 8.3 and 10.2 hereof), and the subleasehold or leasehold estate created hereby shall commence, on the Closing Date and the Company shall accept possession of the Phase III Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the subleasehold and leasehold estate created hereby shall terminate at 11:59 p.m. on November 30, 2036 or on such earlier date as may be permitted by Section 11.1 and 10.2 hereof (the "**Lease Term**").

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Phase III Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Phase III Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the Agency's fee in the amount of \$133,908.00 (equal to the administrative fee of \$133,352.00 plus the public hearing notice costs of \$556.00) for the Facility (which shall include the Phase I Facility, the Phase II Facility and the Phase III Facility). The Company shall pay basic rent for the

Facility One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000.00 for the Facility on the Closing Date and on or before January 1 of each year or within ten (10) days of receipt of demand therefore by the Agency, commencing on January 1, 2015 and continuing through the term of the Lease Agreement.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of receipt of demand therefore, an amount equal to the sum of the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency's leasing, subleasing or financing of the Phase III Facility in accordance with this Phase III Facility Lease Agreement, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents in accordance therewith, the payment of which expenses is not otherwise provided for under this Phase III Facility Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency that has been invoiced to the Company on or prior to the date hereof.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or (b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional.

(a) The obligations of the Company to make the payments required in Section 5.3 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 agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Phase III Facility Lease Agreement or (iii) terminate this Phase III Facility Lease Agreement for any cause whatsoever, except as provided in the provisions of this Phase III Facility Lease Agreement.

(b) Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Phase III Facility Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 8.3, Article X and Article XI hereof, take, suffer or permit any action which will adversely affect, or create any

defect in its leasehold interest in the Phase III Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company, in the Company's sole discretion.

Section 5.5 Reserved.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event any Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof: (i) all references in this Phase III Facility Lease Agreement to such Lender, such Note and such Mortgage applicable to such Loan shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Phase III Facility from the date of such payment until the earlier of (A) the scheduled expiration of the Lease Term and (B) the date the Company enters into another Note and Mortgage, on all of the terms and conditions hereof, or the Company may, at its option, require the Agency to convey the Phase III Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment, the Company, at its sole cost and expense, shall obtain and cause to be recorded or filed appropriate discharges or releases of the applicable Mortgage and any other security interest relating to the Phase III Facility or this Phase III Facility Lease Agreement.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Phase III Facility by Company.

(a) During the Lease Term, the Company shall not abandon the Phase III Facility or cause or permit anyone under the control of the Company to cause any material waste to the Phase III Facility. During the Lease Term, the Company shall not remove any material part of the Phase III Facility outside of the jurisdiction of the Agency (except as necessary in the ordinary course of business of the Company) and shall (i) keep the Phase III Facility or cause the Phase III Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make or cause to be made all necessary repairs and replacements to the Phase III Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Phase III Facility in a sound and commercially reasonable manner.

(b) With the written consent of the Agency, which consent shall not be unreasonably withheld, and the Lender, if any (if required by such Lender) the Company from time to time may make any structural additions, modifications or improvements to the Phase III Facility or any part thereof, provided such actions do not materially and adversely affect the structural integrity of the Phase III Facility. All such additions, modifications or improvements made by the Company during the Lease Term shall become a part of the Phase III Facility and subject to the Phase III Facility Company Lease and this Phase III Facility Lease Agreement, as applicable. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency an interest in or title to such property.

Section 6.2 Installation of Additional Phase III Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Phase III Facility (which may be attached or affixed to the Phase III Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Phase III Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Phase III Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred and is then continuing; or (ii) if any such removal shall adversely affect the structural integrity of the Phase III Facility or materially impair the overall operating efficiency of the Phase III Facility for the purposes for which it is intended, and provided further, that if any damage to the Phase III Facility is occasioned by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the exemptions from real property taxes as provided under the Phase III Facility PILOT Agreement and the sales tax letter delivered by the Agency to the Company, the Company agrees to pay, or cause to be paid, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof: (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Phase III Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Phase III Facility or any part or component thereof, or the rental or sale of the Phase III Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Phase III 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 Phase III Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement; 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 Phase III Facility Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Phase III Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside

on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency or any Lender.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts, which such obligation shall survive the expiration or termination of this Phase III Facility Lease Agreement.

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

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, or caused to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase III Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for

personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

i. Workers' compensation and employer's liability with limits in accordance with applicable law.

ii. Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

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

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Phase III 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 and any Lender that no portion of the Phase III Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4 (a) and (e) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of any Lender and shall provide for payment to any Lender of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency and any Lender of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and any Lender as additional insureds. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to any Lender pursuant to the Mortgage, and the Company consents thereto. Upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation. Nothing contained in this Phase III Facility Lease Agreement is intended to limit or modify any insurance requirements set forth in any Mortgage or other Loan Document executed in connection therewith.

(b) The policies (or a certificate or binder) of insurance required by Section 6.4(a), (b), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the policy (or a certificate or binder) of insurance required by Section 6.4(c) hereof shall be delivered to the Agency on or before the Closing Date. Original certificates (or binders) of insurance required by Sections 6.4(d) (ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person evidence that such policy or policies have been renewed or replaced or are no longer required by this Phase III Facility Lease Agreement. The Company shall provide such further information with respect to the

insurance coverage required by this Phase III Facility Lease Agreement as the Agency and any Lender may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) subject to the terms of any Mortgage or other Loan Document, the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) 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 Lender or Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, payments in lieu of taxes pursuant to the Phase III Facility PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Phase III 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 Phase III Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency or Lender, if any, may pay or cause to be paid such tax, payments in lieu of taxes pursuant to the Phase III Facility PILOT Agreement, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency or any Lender until at least ten (10) days shall have elapsed since notice shall have been given by any Lender to the Agency, with a simultaneous copy of such notice being given to the Company (or by the Agency to any Lender and the Company), and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (iii), (iv), and (v) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Phase III Facility Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency or any Lender shall affect or impair any rights of the Agency hereunder or of the Lender, if any, under the Mortgage arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency or any Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or any Lender pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency or any Lender at one percent (1%) in excess of the rate set forth in any applicable Note, and such amount, together with such interest, shall become additional indebtedness secured by such applicable Mortgage.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Phase III Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase III Facility Lease Agreement or the Phase III Facility PILOT Agreement (whether or not the Phase III Facility is replaced, repaired, rebuilt, restored or relocated);

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

(iv) except as set forth in paragraph (e) below, upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders to the extent provided in the applicable Mortgage, and except as otherwise provided in Section 11.1 and subsection (d) hereof and in the applicable Mortgage, applied by such Lender or Lenders pursuant to the terms of the Mortgage or Mortgages or other Loan Documents; and

(v) if the Phase III Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Phase III Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions either of Sections 11.2, 11.3 and 11.4 hereof or of Section 7.1(g) hereof shall apply.

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

(i) the Phase III Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase III Facility that it does not constitute a "project" as such term is defined in the Act;

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

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

(iv) any other conditions any Lender may reasonably impose.

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

(d) If the Company shall exercise its option to terminate this Phase III Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, subject to the terms of any Mortgage or other Loan Documents. If an Event of Default hereunder shall have occurred and will be continuing and the Agency or any Lender shall have exercised their respective remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof, subject to the terms of any Mortgage or other Loan Documents.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) Except upon the occurrence of an Event of Default, the Company, with the consent of the Agency shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) and (e) hereof on behalf of the Agency and on its own behalf.

(g) If the Phase III Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, the Phase III Facility may be reconveyed to the Company subject to any Mortgage.

Section 7.2 Condemnation.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Phase III Facility Lease Agreement or the Phase III Facility PILOT Agreement (whether or not the Phase III Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities are acquired);

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

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company and the Company shall promptly replace, repair, rebuild, restore or relocate the Phase III Facility or acquire Substitute Facilities, or cause the Phase III Facility to be replaced, repaired, rebuilt or restored, or if there is a Mortgage or Mortgages in effect, to the applicable Lender or Lenders pursuant to the terms of the applicable Mortgage except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by such Lender or Lenders pursuant to the terms of the applicable Mortgage; and

(v) if the Phase III Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Phase III Facility Lease Agreement shall be terminated at the option of the Agency, and the provisions of either Sections 11.2, 11.3 and 11.4 hereof or of Section 7.2(g) hereof shall apply.

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

(i) the Phase III Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Phase III Facility that it does not constitute a “project” as such term is defined in the Act;

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

(iii) following completion of any such replacement, repair, rebuilding or restoration, the Phase III Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances

(iv) any other conditions the Agency or any Lender may reasonably impose pursuant to the applicable Mortgage.

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

(d) If the Company shall exercise its option to terminate this Phase III Facility Lease Agreement pursuant to Section 11.1 hereof, any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender, if any, shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall be retained by the Company.

(e) If the entire amount of every outstanding Loan, if any, and interest thereon and all other amounts due and owing to the Agency hereunder has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Phase III Facility has been substantially condemned and is not replaced, repaired, rebuilt, restored or relocated and a Substitute Facility is not acquired, renovated and equipped, the Phase III Facility may be reconveyed to the Company subject to any Mortgage.

(g) Except upon the occurrence of an Event of Default, the Company with the prior written consent of the Agency shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Agency and on its own behalf.

Section 7.3 Condemnation of Company-Owned Property. Subject to the terms of any Mortgage or other Loan Documents, 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 Phase III 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 Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE PHASE III FACILITY OR THAT THE PHASE III FACILITY IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (collectively, the "**Indemnified Parties**") shall not be liable for and agrees to defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all (i) liability for 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 Phase III 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 Phase III Facility, or (ii) liability arising from or expense incurred by the Agency's acquisition, demolition, construction, equipping, leasing, and subleasing of the Phase III Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) of this Phase III Facility Lease Agreement, all claims arising from the breach of any of the Company's covenants contained in Section 8.8 of this Phase III Facility 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 Phase III Facility Lease Agreement (including without limitation this Section) or any of the other Agency Documents) and, any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, 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 any of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Phase III Facility 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 Phase III Facility 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, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by any of the Indemnified Parties, relating to the enforcement of the provisions herein specified.

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

Section 8.3 Right to Inspect Phase III Facility. The Agency and its duly authorized agents of either of them shall have the right at all reasonable times on reasonable notice to inspect the Phase III Facility.

Section 8.4 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will maintain its existence, and will not dissolve, liquidate or otherwise dispose of substantially all of its assets, will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

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

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 an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase III Facility in compliance with Section 874(8) of the New York State General Municipal Law (the "GML"). The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Company further agrees whenever requested by the Agency 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 Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all commercial sublessees at the Phase III Facility to comply with the requirements of this Section 8.6 by requiring such sublessees to enter into Tenant Agency Compliance Agreements.

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

Section 8.8 Compliance with Orders, Ordinances, Etc.

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

(b) The Company shall keep or cause the Phase III Facility to be kept free of Hazardous Substances other than Hazardous Substances used in the ordinary course of the Company's operations in compliance with all applicable federal, state and local laws or regulations. Without limiting the foregoing, the Company shall not cause or permit the Phase III Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Phase III Facility or onto any other property in violation of all applicable laws and regulations. The Company shall comply with and shall use commercially reasonable efforts to ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) conduct and complete, or cause to be conducted and completed, all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances in violation of all applicable laws and regulations, on, from, or affecting the Phase III Facility (A) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, and (B) in accordance with the applicable orders and directives of all federal, state, and local governmental authorities; and (ii) defend, indemnify, and hold harmless the Indemnified Parties, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, reasonable costs, or reasonable expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out

of, or in any way related to (A) the presence, disposal, release, or threatened release of any Hazardous Substances at the Phase III Facility which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances in violation of all applicable laws and regulations, and/or (D) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event any Mortgage is foreclosed by any Lender or the Company tenders a deed in lieu of foreclosure to any Lender, the Company shall deliver the Phase III Facility to such Lender free of any and all Hazardous Substances in violation of all applicable laws and regulations so that the condition of the Phase III Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Phase III Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law, and shall survive the transactions contemplated herein.

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

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

(e) Notwithstanding any provisions of this Section 8.8, the Agency and any Lender each retain the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the

Agency and any Lender shall select their own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) hereof, 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 or any Lender shall notify the Company that by nonpayment of any such item or items, the lien of the applicable Mortgage may be materially endangered or the Phase III 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 a bond, in form and substance satisfactory to the Agency and any Lender, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency and any Lender to protect their respective interests. Mechanics' Liens shall be discharged or bonded within sixty (60) days of the filing or perfection thereof.

Section 8.10 Identification of Phase III Equipment. All Phase III Equipment which is or may become the Property of the Agency pursuant to the provisions of this Phase III Facility Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Phase III Equipment and other Property of whatever nature affixed or attached to the Phase III Land or used or to be used by the Company in connection with the Phase III Land or the Phase III Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of renovation of the Phase III Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Phase III Facility Lease Agreement and such Phase III Equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Phase III Facility and to any investment credit with respect to any part of the Phase III Facility.

Section 8.12 Employment Opportunities; Notice of Jobs. The Company covenants and agrees, and shall request any and all sublessees to covenant and agree, that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Phase III 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 Phase III Facility is located (collectively, the “Referral Agencies”). The Company also agrees, and shall request any and all sublessees to agree, that they will, except as otherwise provided by collective bargaining contracts or agreements to which they are parties, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.13 Employment at the Phase III Facility. The Company covenants at all times to maintain or cause the Phase III Sublessee to maintain at the Phase III Facility three (3) full time equivalent employees calculated on the basis of 35 hours per week (“FTE”) as of two years from the date of occupancy (including the FTEs of all tenants located at the Phase III Facility) (except as such number may be revised pursuant to an agreement between the Company and the Agency) and thereafter throughout the Lease Term who are employees of the Company or any subsidiary or affiliates of the Company or tenants of the Company or of the Phase III Sublessee located at the Phase III Facility whose place of employment or workplace is located at the Phase III Facility; provided that failure to comply with the foregoing shall not be a breach of the foregoing covenant or an Event of a Default hereunder as long as such failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issuers or industry wide conditions. It is further provided that the Company and the Phase III Sublessee may not actually provide the FTEs at the Phase III Facility, but rather shall sublease the Phase III Facility to tenants, provided that (a) the Company and/or the Phase III Sublessee use all reasonable efforts to lease up the commercial portion of the Phase III Facility, and (b) include provisions in all commercial subleases requiring any tenant to comply with the provisions of the Phase III Facility Lease Agreement applicable to them.

Section 8.14 Compliance with the Act. The Company hereby agrees to comply with Section 875 of the GML. The Company further agrees that the exemption of sales and use taxes provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to Section 4.1(d) hereof is subject to recapture of benefits pursuant to Section 875 and the Phase III Facility Recapture Agreement.

ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency, during the Lease Term, shall not sell, convey, transfer, lease encumber or otherwise dispose of the Phase III Facility or any part thereof, or any of its rights under this Phase III Facility Lease Agreement, without the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned and any Lender.

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

(c) Except as provided in Section 9.3 hereof, nothing herein shall limit the Company's right to sell and/or mortgage its interests herein and the Agency shall, at the sole cost and expense of the Company, sell, convey, transfer, lease, assign, encumber, pledge or otherwise assist the Company in disposing of the Phase III Facility, any part thereof or any interest therein. In such case, the Agency shall execute, acknowledge when appropriate, and deliver from time to time at the request of the Company all such instruments and documents as in the opinion of the Company may be desirable, necessary or required to effectuate the transaction contemplated and otherwise cooperate to effectuate and carry out the intent and purpose of the contemplated transaction. In the event the Company desires to take any of the foregoing actions, the Agency agrees to execute and delivery an estoppel certificate certifying such items as may reasonably be required by any such purchaser, assignee, mortgagee or other potential lienor.

(d) No conveyance of any part of, or interest in, the Phase III Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Phase III Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase III Facility PILOT Agreement.

Section 9.2 Removal of Phase III 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 Phase III Equipment. In any instance where the Company determines that any item of Phase III Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of any Lender, if required by the Mortgage, if any, may remove such items from the Phase III Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, if any, provided that such removal will not materially impair the operation of the Phase III Facility for the purpose for which it is intended or change the nature of the Phase III Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item

of Phase III Equipment. The Company shall pay any costs (including counsel fees) of the Agency, and all of its own expenses, incurred in transferring title to any item of Phase III Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Phase III Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Phase III Facility Lease Agreement or any abatement or diminution of the amounts payable by it under the Phase III Facility PILOT Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Phase III Facility Lease Agreement may not be assigned, in whole or in part, and the Phase III Facility may not be further subleased, in whole or in part (except pursuant to the Phase III Facility Sublease Agreement), without the prior written consent of the Agency for any commercial sublease, in each instance, which consent shall not be unreasonably withheld, conditioned or delayed but shall be subject to the dates of the Agency's Board meetings, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement, in substantially the form attached hereto as Exhibit D, by an Authorized Representative of the Agency. Any assignment or commercial sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder, unless the Agency consents to such release;
- (ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Phase III Facility Lease Agreement or any Mortgage shall be adversely affected thereby;
- (v) the Phase III Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Phase III Facility to be used in violation of the Act and no assignment or sublease shall cause the Phase III Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;
- (vi) any commercial (as opposed to residential) sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit D.

Notwithstanding any of the foregoing to the contrary, the foregoing requirements shall not apply to any residential sublease.

(b) If any Lender or the Agency shall so reasonably 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 cost shall furnish any Lender and the Agency with opinions, in form and substance satisfactory to any Lender and the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) Notwithstanding anything to the contrary in Section 9.3(a) hereof, the Company may assign this Phase III Facility Lease Agreement, without the consent of the Agency, but with prior written notice to the Agency, to any entity in which the Company owns a controlling interest.

(d) In accordance with Section 862(1) of the Act, the Phase III 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 Phase III 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 Phase III Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 9.4 Mortgage and Pledge of Agency's Interest to Lender. The Agency shall, at the request of and at the sole cost and expense of the Company, (i) mortgage its interest in the Phase III Facility, and (ii) pledge and assign its rights to and interest in this Phase III Facility Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Phase III Facility Lease Agreement (other than Unassigned Rights), to any Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its exclusive benefit.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Phase III Facility Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 9.6 Merger of Agency. Nothing contained in this Phase III Facility Lease Agreement shall prevent the consolidation of the Agency with, or merger of the

Agency into, or transfer of the leasehold interest in the Phase III Facility, to the entire Phase III Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Phase III Facility and the legal right to continue the tax benefits (e.g., real estate tax, sales and use tax and mortgage recording tax exemptions) contemplated to be provided to the Company in accordance with the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Phase III Facility Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Phase III Facility shall be transferred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be “Events of Default” under this Phase III Facility Lease Agreement:

- (i) the failure by the Company to pay or cause to be paid on the date due, or within the applicable grace period, the amount specified to be paid pursuant to Section 5.3 (a) and (b) hereof;
- (ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(f) and (g), 6.3, 6.4, 6.5, 8.2, 8.4, 8.6, 8.8, 8.13, 8.14 and 9.3 hereof, which is not cured within thirty (30) days after written notice;
- (iii) the failure by the Company to pay or cause to be paid on the dates due, or within the applicable grace period, the amounts specified to be paid pursuant to the Phase III Facility PILOT Agreement or the Phase III Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;
- (iv) the occurrence and continuation of a Recapture Event under the Phase III Facility Recapture Agreement;
- (v) the invalidity, illegality or unenforceability of the Phase III Facility PILOT Agreement, or the failure due to an action or inaction on the part of the Company to observe and perform any material covenant contained in the Phase III Facility PILOT Agreement or the Phase III Facility Recapture Agreement and the continuance of such failure beyond the expiration of any applicable notice and cure period contained therein;
- (vi) any material representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading when made in any material respect;
- (vii) the failure by the Company to observe and perform any material covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a

period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or any Lender, or, if such covenant is capable of cure but cannot be cured within such thirty (30) days period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute such cure to completion;

(viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days after notice to the Company any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for thirty (30) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

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

(x) an Event of Default under any other documents executed and delivered in connection with any Mortgage shall have occurred and be continuing beyond any applicable notice and cure period;

(xi) the invalidity, illegality or unenforceability of any Mortgage or any other documents executed and delivered in connection with such Mortgage;

(xii) an Event of Default or a default by the Company under the Phase III Facility Environmental Compliance and Indemnification Agreement shall have occurred and be continuing beyond any applicable notice and cure period;

(xiii) sale or closure of the Phase III Facility and/or departure of the Company from the Town of Brookhaven, except as permitted under Article IX hereof; or

(xiv) a default by any sublessee under its respective Tenant Agency Compliance Agreement; provided, however, that any such default shall not constitute an Event of Default hereunder so long as the Company is proceeding diligently to cure such default or the Company has terminated, or is using commercially reasonable efforts to terminate, the sublease agreement

with such defaulting sublessee and has evicted, or is using commercially reasonable efforts to evict, such defaulting sublessee.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Phase III Facility Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Phase III Facility Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

(c) Notwithstanding anything to the contrary contained herein, any Member of the Phase III Sublessee shall have the right, but not the obligation to, cure a default hereunder, and the Agency agrees to accept such cure as if provided by the Company.

(d) The parties hereto mutually agree that upon the occurrence and continuation of an Event of Default, the Lender shall be entitled to notice at the same time and in the same manner as the Company. The Lender, after expiration of the Company's cure period for any Event of Default described in Section 10.1 hereof, shall have an additional (i) ten (10) days to cure monetary defaults; and (ii) thirty (30) days to cure non-monetary defaults capable of being cured. Performance of any cure by the Lender shall be accepted as performance by the Company.

Section 10.2 Remedies on Default.

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

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable:
 - (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b)

hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the Phase III Facility PILOT Agreement, (C) all amounts due and owing under the Phase III Facility Recapture Agreement; and (D) all other payments due under this Phase III Facility Lease Agreement and the Phase III Facility PILOT Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(viii) hereof shall have occurred, such installments of rent and other payments due under this Phase III Facility Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency or any Lender;

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

(iii) upon the occurrence and continuation of an Event of Default under the Mortgage, and only at the direction of the Lender, terminate, on ten (10) days written notice to the Company, the Lease Term and all rights of the Company under this Phase III Facility Lease Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Phase III Facility and lease the Phase III Facility to the Lender or the designee of the Lender for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease; or

(iv) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement, to secure possession of the Phase III Facility and to enforce the obligations, agreements and covenants of the Company under this Phase III Facility Lease Agreement and under the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement.

(b) No action taken pursuant to this Section 10.2 (including repossession of the Phase III Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under the Phase III Facility PILOT Agreement or the Phase

III Facility Recapture Agreement, except that upon reconveyance of the Phase III Facility to the Company pursuant to Section 10.2(a)(ii), the Phase III Facility PILOT Agreement shall terminate.

(c) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and to any Lender to enter the Phase III Facility with agents or representatives of the Agency and any Lender to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Phase III Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or any Lender 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 Phase III Facility 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 and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency and any Lender, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Phase III Facility 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 this Phase III Facility Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

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

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year within thirty (30) days after delivery of a written request therefor from the Agency, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Phase III Facility Lease Agreement and no Event of Default exists under this Phase III Facility Lease Agreement, the Phase III Facility PILOT Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.6 hereof to the extent such information is not otherwise deliverable on a different date.

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

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Phase III Facility Lease Agreement at any time, whether a default exists hereunder or not, and for any reason whatsoever, upon filing with the Agency and any Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 11.2 hereof; provided however, that if a Mortgage on the Phase III Facility is in effect, then the Company shall not exercise, and the Agency shall not accept the Company's exercise of, its option to terminate this Phase III Facility Lease Agreement without the prior written consent of the Lender.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Phase III Facility Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make, or cause to be made, the following payments:

- (a) To the Agency or the Taxing Authorities (as such term is defined in the Phase III Facility PILOT Agreement) as appropriate pursuant to the Phase III Facility PILOT Agreement: all amounts sufficient to pay all due and payable, current and past due payments in lieu of taxes under the Phase III Facility PILOT Agreement, as of the date of conveyance.
- (b) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.
- (c) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

All such amounts shall be supported by statement and invoices with reasonable detail evidencing the amounts due.

Section 11.3 Obligation to Purchase Phase III Facility. Upon expiration or termination of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Phase III Facility from the Agency, and the Agency shall sell the Phase III Facility to the Company, for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to the Phase III Facility PILOT Agreement through the date upon which this Phase III Facility Lease Agreement terminates or expires. The Company shall accept surrender of the Phase III Facility by giving written notice to the Agency and to any Lender (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to accept surrender of the Phase III Facility, and (ii) fixing the date of closing such surrender of the Phase III Facility, which shall be the date on which this Phase III Facility Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any surrender of the Phase III Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the

consideration for surrender, deliver and request the Lender, if any, to deliver to the Company all necessary documents (i) to convey to the Company, by a leasehold estate, or, title to the Property being surrendered, as such Property exists, subject only to the following: (A) any Liens to which the leasehold interest or title to such Property was subject when conveyed to the Agency, (B) 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, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Phase III Facility Lease Agreement or arising out of an Event of Default hereunder, (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Phase III Facility (but not including any Unassigned Rights); and (iii) (A) to release the Agency from any Mortgage and any other Loan Documents to which it is a party, and (B) if applicable, to discharge and release the Mortgage and any other security interest held by such Lender. The Agency shall also execute and deliver a Bill of Sale relating to the Phase III Equipment and Phase III Improvements on the Phase III Land and any documents reasonably necessary to discharge of record this Phase III Facility Lease Agreement or any memorandum thereof. Upon the conveyance of the Phase III Facility by the Agency to the Company pursuant to this Article XI, the Phase III Facility PILOT Agreement shall terminate.

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, or via reputable overnight delivery service, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Executive Director

To the Company:

CV Village at Coram, LLC
183 E. Main Street, Suite 600
Rochester, New York 14604
Attention: Allen Handelman, Vice President

With a copy to:

Red Stone-Fund 42 Limited Partnership
c/o Red Stone Equity Partners, LLC
200 Public Square, Suite 1550
Cleveland, Ohio 44114

And:

Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Attention: Roger W. Holmes, Esq.

And:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Daniel P. Deegan, Esq.

To Community Development Trust:

Community Development Trust
1350 Broadway, Suite 700
New York, NY 10018
Attention: Brian Gallagher

With a copy to:

Ballard Spahr, LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
Attention: Mary Jo George, Esq.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall deliver written instructions to the Agency and the Company with the address of such Lender.

Section 12.2 Binding Effect. This Phase III Facility Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Phase III Facility 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 12.4 Amendments, Changes and Modifications. This Phase III Facility Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and consented thereto by any Lender.

Section 12.5 Execution of Counterparts. This Phase III Facility 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 12.6 Applicable Law. This Phase III Facility Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Phase III Equipment; Further Assurances.

(a) Upon the Completion Date with respect to the Phase III Facility and the installation of all of the Phase III Equipment therein, the Company shall prepare and deliver to the Agency a schedule listing all of the Phase III Equipment not previously described in this Phase III Facility 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 equipment not theretofore previously described herein or in the aforesaid schedule.

(b) 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 Phase III Facility Lease Agreement. .

Section 12.8 Survival of Obligations. This Phase III Facility Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 5.3, and all indemnities shall survive the foregoing and any termination or expiration of this Phase III Facility Lease Agreement.

Section 12.9 References to Lender, Loan, Note, or Mortgage. Any references herein to Lender, Loan, Note or Mortgage or other similar words, whether in the singular or the plural, are in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

Section 12.10 Mortgage Financing. In order to finance or refinance certain costs of the acquisition, demolition, construction and equipping of the Phase III Facility, the Company may decide to utilize a lender or lenders, as may be determined, to finance, refinance, modify and/or extend an amount as determined by the Company on the date of delivery of this Phase III Facility Lease Agreement or thereafter, including existing loans (the "**Loan**"). The Agency agrees to cooperate with the Company in connection with such financing or refinancing, including without limitation granting one or more mortgages on the Phase III Facility, inclusive of any existing mortgages, executing such other documents required by the Company's lender(s) and complying with the terms and provisions of such mortgage(s) and other documents, provided that such mortgage and other documents shall meet all the requirements set forth on Exhibit E attached hereto and made a part hereof. The Agency and the Company agree that this Phase III Facility Lease Agreement shall be subject and subordinate to the Loan and the term and provisions of all documents evidencing and securing the Loan (collectively, the "**Loan Documents**"). The Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Loan Documents.

Section 12.11 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Phase III Facility Lease 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 Phase III Facility Lease Agreement.

Section 12.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Phase III Facility Lease Agreement or the Phase III Facility or any matters whatsoever arising out of or in any way connected with this Phase III Facility Lease Agreement.

(Remainder of Page Intentionally left Blank -Signature Pages Follow)

IN WITNESS WHEREOF, the Agency and the Company have caused this Phase III Facility Lease Agreement to be executed in their respective names by their duly authorized officers, all as of February 1, 2014.

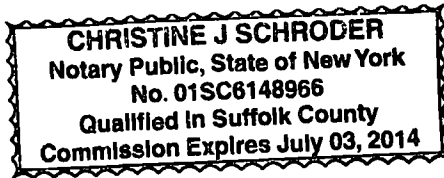
TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

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

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

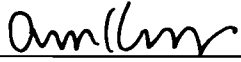
On the 1st day of February in the year 2014, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Christine J Schroder
Notary Public




CV VILLAGE AT CORAM, LLC

By: Conifer Realty, LLC, its sole member

By 
Name: Andrew I. Crossed
Title: Executive Vice President

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

On the 14th day of February in the year 2014, before me, the undersigned, personally appeared **Andrew I. Crossed**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

S STURMAN JENNINGS
Notary Public, State of New York
No. 021F6096835
Qualified in Monroe County
Commission Expires August 11, 2015

EXHIBIT A-1

Legal Description of Phase I Land

SCHEDULE A

PHASE 1 LEGAL DESCRIPTION

PHASE 1 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-029.004 & p/o 29.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point on the southerly boundary line of Farmers Avenue (not-open), said point of beginning being North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 435.6 feet from a point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue;

Thence from said point of beginning, North 85°07'07" East along said southerly boundary line a distance of 316.94 feet to the southeasterly terminus of Farmers Avenue (not-open);

Thence North 26°50'17" East along the easterly terminus of Farmers Avenue (not open), then lands now or formerly of Avalon Bay Communities, Inc. on the west and through the lands of CV Village at Coram, LLC., a distance of 182.93 feet to a point;

Thence continuing through the lands of CV Village at Coram, LLC. the following twenty seven (27) courses and distances;

1. South 56°27'26" East, a distance of 22.27 feet to a point, thence
2. North 33°32'34" East, a distance of 46.85 feet to a point, thence
3. South 56°27'26" East, a distance of 202.50 feet to a point, thence
4. North 33°32'34" East, a distance of 25.31 feet to a point, thence
5. South 56°27'26" East, a distance of 75.61 feet to a point, thence
6. South 33°32'34" West, a distance of 38.70 feet to a point, thence
7. South 56°27'26" East, a distance of 61.29 feet to a point, thence
8. South 33°32'34" West, a distance of 81.11 feet to a point, thence
9. South 56°27'26" East, a distance of 77.01 feet to a point, thence
10. South 33°32'34" West, a distance of 46.34 feet to a point, thence
11. South 56°27'26" East, a distance of 116.97 feet to a point, thence
12. North 83°59'47" East, a distance of 63.84 feet to a point, thence
13. North 06°00'13" West, a distance of 83.40 feet to a point, thence
14. South 83°59'47" West, a distance of 41.93 feet to a point, thence
15. North 25°40'54" East, a distance of 68.91 feet to a point, thence
16. North 56°27'26" West, a distance of 39.56 feet to a point, thence

17. North 33°31'54" East, a distance of 22.07 feet to a point, thence
18. North 05°18'13" West, a distance of 42.36 feet to a point, thence
19. North 29°39'59" East, a distance of 32.15 feet to a point, thence
20. North 17°51'00" West, a distance of 84.24 feet to a point, thence
21. North 70°48'45" West, a distance of 36.26 feet to a point, thence
22. North 11°24'25" West, a distance of 154.94 feet to a point, thence
23. North 49°15'49" West, a distance of 257.25 feet to a point, thence
24. North 71°17'22" West, a distance of 79.21 feet to a point, thence
25. North 85°27'01" West, a distance of 79.70 feet to a point, thence
26. South 47°47'14" West, a distance of 34.42 feet to a point, thence
27. South 26°56'56" West, a distance of 180.00 feet to a point on the easterly boundary of lands of the State of New York (recharge basin);

Thence northerly along said boundary, the following two (2) courses and distances;

1. North 2°27'42" East, a distance of 109.24 feet to a point, thence
2. North 12°37'19" West, a distance of 229.07 feet to point on the southerly boundary of lands of Selective Coram, Inc.

Thence easterly and northerly along said boundary, the following two (2) courses and distances;

1. North 80°30'17" East, a distance of 84.95 feet to a point, thence
2. North 7°01'27" East, a distance of 200.00 feet to point on the southerly boundary line Middle country Road (N.Y.S. Rt. 25);

Thence Easterly along the southerly boundary line of Middle Country Road (N.Y.S. Rt. 25) along an arc of a curve to the left having a radius of 756.78 feet a distance of 104.41 (calc) 104.36 (deed) to a point;

Thence southerly along the westerly boundary line of lands of Smithtown Rte. 111 Properties, LLC. and the easterly line of a 20' wide Right of Way, South 9°30'17" West, a distance of 333.55 feet to a point;

Thence easterly and northerly along said lands of Smithtown Rte. 111 Properties, LLC. the following three (3) courses and distances;

1. South 67°48'03" East, a distance of 136.67 feet to a point, thence
2. North 12°01'17" East, a distance of 178.67 feet to a point, thence
3. North 40°28'07" East, a distance of 27.05 feet to lands of Partnership of Mirabelli & Brandt;

Thence, easterly along said boundary and then lands of M K L V Ventures, Inc. the following three (3) courses and distances

1. South 66°51'13" East, a distance of 75.63 feet to a point, thence
2. South 43°02'23" East, a distance of 229.94 feet to point, thence

3. North 83°11'27" East, a distance of 50.00 feet to the westerly boundary line of lands of 3712 Route 112, LLC.

Thence southerly and easterly along said boundary line the following two (2) courses and distances;

- 1. South 6°48'33" East, a distance of 50.00 feet to point, thence**
- 2. North 83°11'27" East, a distance of 100.00 feet to point on the westerly boundary line of the Port Jefferson-Patchogue Road (N.Y.S. RT. 112);**

Thence, southerly along said boundary the following two (2) courses and distances

- 1. South 6°56'13" East, a distance of 276.87 feet to a point, thence**
- 2. South 5°57'33" East, a distance of 483.17 feet to point on the northerly boundary line of lands of Milap Enterprises Inc.;**

Thence westerly along said boundary line, then the northerly terminus of Coram Avenue and then other lands of Milap Enterprises Inc. the following two (2) courses and distances;

- 1. South 82°17'07" West, a distance of 918.53 feet to a point, thence**
- 2. South 85°07'07" West, a distance of 104.53 to a point on the easterly boundary of lands now or formerly of Anne M. Wilberg revocable Trust;**

Thence northerly along lands now or formerly of Anne M. Wilberg revocable Trust and then lands now or formerly of Caroline Giovanniello & Anthony Giovanniello North 4°52'53" West, a distance of 400.00 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-2

Legal Description of Phase II Land

SCHEDULE A

PHASE 2 LEGAL DESCRIPTION

PHASE 2 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at an angle point on the easterly boundary line of lands now or formerly of Avalon Bay Communities, Inc., said point of beginning being the following two courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

1. North 85°07'07" East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet
2. North 26°50'17" East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 165.11 feet

Thence from said point of beginning North 50°48'13" West, a distance of 124.89 feet to point on the easterly boundary of lands of the State of New York (recharge basin)

Thence northerly along the easterly boundary of lands of the State of New York (recharge basin) North 2°27'42" East, a distance of 69.37 to a point

Thence through the lands of CV Village at Coram, LLC. the following twenty five (25) courses and distances;

1. North 26°56'56" East, a distance of 180.00 feet to a point, thence
2. North 47°47'14" East, a distance of 34.42 feet to a point, thence
3. South 85°27'01" East, a distance of 79.70 feet to a point, thence
4. South 71°17'22" East, a distance of 79.21 feet to a point, thence
5. South 49°15'49" East, a distance of 257.25 feet to a point, thence
6. South 11°24'25" East, a distance of 154.94 feet to a point, thence
7. South 70°48'45" East, a distance of 36.26 feet to a point, thence
8. South 17°51'00" East, a distance of 84.24 feet to a point, thence
9. South 29°39'59" West, a distance of 32.15 feet to a point, thence
10. South 05°18'13" East, a distance of 42.36 feet to a point, thence

11. South 33°31'54" West, a distance of 22.07 feet to a point, thence
12. South 56°27'26" East, a distance of 39.56 feet to a point, thence
13. South 25°40'54" West, a distance of 68.91 feet to a point, thence
14. North 56°27'26" West, a distance of 80.77 feet to a point, thence
15. South 33°32'34" West, a distance of 31.92 feet to a point, thence
16. North 56°27'26" West, a distance of 77.01 feet to a point, thence
17. North 33°32'34" East, a distance of 81.11 feet to a point, thence
18. North 56°27'26" West, a distance of 61.29 feet to a point, thence
19. North 33°32'34" East, a distance of 38.70 feet to a point, thence
20. North 56°27'26" West, a distance of 75.61 feet to a point, thence
21. South 33°32'34" West, a distance of 25.31 feet to a point, thence
22. North 56°27'26" West, a distance of 202.50 feet to a point, thence
23. South 33°32'34" West, a distance of 46.85 feet to a point, thence
24. North 56°27'26" West, a distance of 22.27 feet to a point, thence
25. South 26°50'17" West, a distance of 17.82 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT A-3

Legal Description of Phase III Land

PHASE 3 LEGAL DESCRIPTION

PHASE 3 DESCRIPTION

Portion of Suffolk County Tax Map No.: 0200-476.00-02.00-025.005

All that certain plot, piece or parcel of land, lying and being at Coram, Town of Brookhaven, County of Suffolk, State of New York, Said parcel being more particularly bounded and described as follows:

Beginning at a point within the lands of CV Village at Coram, LLC, said point of beginning being the following courses and distances from the point formed by the intersection of the southerly boundary line of Farmers Avenue (not-open) and the easterly boundary line of Planters Avenue

North $85^{\circ}07'07''$ East, along said southerly boundary line of Farmers avenue (not-open), a distance of 752.54 feet

North $26^{\circ}50'17''$ East along the easterly terminus of Farmers Avenue (not open) and then lands now or formerly of Avalon Bay Communities, Inc. on the west, a distance of 182.93 feet

Thence through the lands of CV Village at Coram, LLC the following nine (9) courses and distances

1. South $56^{\circ}27'26''$ East, a distance of 22.27 feet to a point, thence
2. North $33^{\circ}32'34''$ East, a distance of 46.85 feet to a point, thence
3. South $56^{\circ}27'26''$ East, a distance of 202.50 feet to a point, thence
4. North $33^{\circ}32'34''$ East, a distance of 25.31 feet to a point, thence
5. South $56^{\circ}27'26''$ East, a distance of 75.61 feet to a point, thence
6. South $33^{\circ}32'34''$ West, a distance of 38.70 feet to a point, thence
7. South $56^{\circ}27'26''$ East, a distance of 61.29 feet to a point, thence
8. South $33^{\circ}32'34''$ West, a distance of 81.11 feet to a point, thence
9. South $56^{\circ}27'26''$ East, a distance of 77.01 feet to a the point or place of beginning;

Thence from said point of beginning through the lands of CV Village at Coram, LLC. the following seven (7) courses and distances;

1. North $33^{\circ}32'34''$ East, a distance of 31.92 feet to a point, thence
2. South $56^{\circ}27'26''$ East, a distance of 80.77 feet to a point, thence
3. North $83^{\circ}59'47''$ East, a distance of 41.93 feet to a point, thence
4. South $06^{\circ}00'13''$ East, a distance of 83.40 feet to a point, thence
5. South $83^{\circ}59'47''$ West, a distance of 63.84 feet to a point, thence
6. North $56^{\circ}27'26''$ West, a distance of 116.97 feet to a point, thence
7. North $33^{\circ}32'34''$ East, a distance of 46.34 feet to the point or place of beginning.

Together with the benefits and burdens of a temporary, non-exclusive construction easement, a permanent maintenance easement, perpetual, non-exclusive ingress and egress easement, parking easement and utility easement as recited in a Declaration of Easement dated as of January 17, 2014 by C V Village at Coram, LLC and recorded January 22, 2014 in Deed Liber 12760, Cp 954.

EXHIBIT B

Phase III Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed or installed or to be acquired, constructed or installed in connection with the completion of the Town of Brookhaven Industrial Development Agency's CV Village at Coram, LLC 2014 Facility – Phase III Facility, located at 3700 Route 112, Coram, Town of Brookhaven, 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 Suffolk County.

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

Now therefor, the parties to the attached Phase III Facility Lease 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, demolish, and equip the Phase III 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 demolition, construction and equipping of the Phase III Facility shall provide:

(a) in the hiring of employees for the performance of work in acquiring, demolishing, constructing and equipping the Phase III Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, demolition, construction and equipping of the Phase III Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, demolition,

construction and equipping of the Phase III Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing, renovating and equipping the Phase III 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 and equipping of the Phase III 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

Form of Tenant Agency Compliance Agreement

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20__, is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “Agency”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the “Tenant”).

WITNESSETH

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

WHEREAS, the Agency has agreed to provide its assistance in the acquisition of title to a parcel of land aggregating approximately 17.60 acres and located at 3700 Route 112, Coram, Town of Brookhaven, New York (the “Land”), together with existing structures and improvements located thereon by CV Village at Coram, LLC, a New York limited liability company (the “Company”) and the demolition, construction and equipping of a mixed-use industrial development facility which will occur in three phases as follows: (A) Phase I will consist of construction and equipping of six (6) buildings totaling approximately 110,000 square feet and containing an aggregate of approximately 98 residential units and approximately 9,300 square feet of commercial space (the “Phase I Facility”), which Phase I Facility will be leased to the Company pursuant to a Phase I Facility Lease Agreement, dated as of February 1, 2014 (the “Phase I Facility Lease Agreement”), for further sublease by the Company to and to be used by Wincoram Commons I, LLC, a New York limited liability company (the “Phase I Sublessee”); (B) Phase II will consist of the construction and equipping of five (5) buildings totaling approximately 82,000 square feet and containing an aggregate of approximately 78 additional residential units (the “Phase II Facility”), which Phase II Facility will be leased to the Company pursuant to a certain Phase II Facility Lease Agreement, dated as of February 1, 2014 (the “Phase II Facility Lease Agreement”), by and between the Agency and the Company, for further sublease by the Company to and to be used by Wincoram Commons Phase II, LLC, a New York limited liability company (the “Phase II Sublessee”); and (C) Phase III will consist of the construction and equipping of an approximately 13,300 square foot building to be used for retail space (the “Phase III Facility”); and together with the Phase I Facility and the Phase II Facility, the “Facility”), which Phase III Facility will be leased to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “Phase III Facility Lease Agreement”; and together with the Phase I Facility Lease Agreement and the Phase II Facility Lease Agreement, the “Lease Agreements”), by and between the Agency and the Phase III Company, for further sublease by the Company to and to be used by Wincoram Commons

Commercial, LLC, a New York limited liability company (the “**Phase III Sublessee**”), all to be leased by the Agency to and used by the Company as a mixed-use development;

WHEREAS, the Company has agreed to ground lease a portion of the Land as described in Exhibit A attached hereto (the “**Phase III Land**”) to the Agency pursuant to the terms of a certain Phase III Facility Company Lease Agreement dated as of February 1, 2014 (the “**Phase III Facility Company Lease**”), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Phase III Equipment as described in Exhibit B attached hereto pursuant to a Bill of Sale, dated February 18, 2014 (the “**Phase III Facility Bill of Sale**”);

WHEREAS, the Agency has agreed to sub-lease the Phase III Land and lease the Phase III Improvements and the Phase III Equipment to the Company pursuant to a certain Phase III Facility Lease Agreement, dated as of February 1, 2014 (the “**Phase III Facility Lease Agreement**”), by and between the Agency and the Company;

WHEREAS, the Company has agreed to sublease the Phase III Facility to the Phase III Sublessee pursuant to a Sublease Agreement, dated as of February 1, 2014 (the “**Phase III Facility Sublease**”), by and between the Company and the Phase III Sublessee;

WHEREAS, the Phase III Sublessee has agreed to sublease a portion of the Phase III Facility (the “**Demised Premises**”) to the Tenant pursuant to a [Sub-Sublease Agreement], dated [____], 20[] (the “**Sublease Agreement**”), by and between the Company and the Tenant, which may be amended from time to time;

WHEREAS, in connection therewith, the Agency and the Tenant have agreed to enter into this Tenant Agency Compliance Agreement, dated as of [____] 20[] (the “**Tenant Agency Compliance Agreement**”) whereby the Tenant will provide certain assurances to the Agency with respect to the Demised Premises.

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

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

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

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____, and in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This

Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Phase III Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorney's fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

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

(e) The Tenant will complete construction of any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises in accordance with the terms and provisions of the Tenant Lease Agreement.

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to the following (but without duplication of insurance provided by the Company pursuant to the Phase III Facility Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Phase III Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Phase III Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

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

- (iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined

single limit for personal injury, including bodily injury or death, and property damage).

- (iv) Excess “umbrella” liability providing liability Insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required hereby shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least ten (10) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional named insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Tenant as additional named insureds.

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

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

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III SPECIAL COVENANTS

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

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for 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 Demised Premises or to common areas or other portions of the Phase III Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to

the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant 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 Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises, subject to the Tenant's reasonable security provisions.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Phase III Facility not to constitute a "project" as such quoted term is defined in the Act. Without limited the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Phase III Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and shall use commercially reasonable efforts to cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and

requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Phase III Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Phase III Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Phase III Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Phase III Facility or onto any other property. The Tenant shall comply with, and shall use commercially reasonable efforts to ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Phase III Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature

referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant 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 Tenant that, by failure to comply with such requirement or requirements, the Phase III Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Phase III Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

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

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. The Tenant shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Phase III Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Tenant shall also provide the Agency with the information necessary to comply with Section 874(9) of the GML. The Tenant shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency such information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, 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 Comptroller, or any of the Agency Documents or Tenant Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Phase III Facility is located (collectively, the “**Referral Agencies**”). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 3.8 Subleasing. In accordance with Section 862(1) of the Act, the Phase III 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 Phase III 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 Phase III Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 3.9 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Phase III Facility Lease Agreement as Schedule A.

Section 3.10 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

EXHIBIT E

MORTGAGE REQUIREMENTS

A mortgage should be granted by the Agency and the Company, or an existing mortgage may be modified and/or extended with the Agency joining in on the granting clauses and the remedy provisions and then all other covenants that would usually be from the mortgagor should come from the Company only and not the Agency. In those instances where a covenant by the Agency is required, please word the covenant as follows: "The Mortgagor agrees, having first been indemnified against any liability or expense to its satisfaction,..." Further, if the lender requires the Agency to provide any certificates or take any action, such action or provisions must be at the sole cost and expense of the Company. In addition, the mortgage must contain the Agency's standard non-recourse and hold harmless provisions set forth below. Pursuant to the granting clauses of the mortgage, the Agency will grant to the lender a mortgage lien on and a security interest in the Phase III Facility and the Agency's rights under the Phase III Facility Lease Agreement except for the Agency's Unassigned Rights (as defined below). The Agency will also enter in an assignment of rents and leases with respect to the Phase III Facility Lease Agreement except for the Agency's Unassigned Rights and also subject to the requirements herein with respect to a mortgage. All other loan documents, such as the Note, should come from the Company. The Agency will not be a party to them.

Finally, in order to preserve the Mortgage Recording Tax exemption, the mortgage should contain a provision stating that the Agency will record the mortgage or cause the mortgage to be recorded in the Suffolk County Clerk's Office. That language is also below.

Required Language:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section _____. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security

given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agency (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or Suffolk County and neither the State of New York nor Suffolk County shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section _____. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for 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 Phase III Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, renovating, equipping, installation, owning and leasing of the Phase III Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein 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 the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section ____ shall remain in full force and effect after the termination of this Mortgage 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 reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

Section _____. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section _____. Termination of Lease Agreement. Upon the Termination of the Phase III Facility Lease Agreement, for any reason whatsoever and at the sole cost and expense of the Company, the Mortgagee shall prepare and deliver to the Agency and the Company, and the Agency and the Company shall execute and deliver, any documents necessary to amend and restate this Mortgage, in order to remove the Agency as a party hereto.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4, 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase III Facility Lease Agreement, all payments under the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement.

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.

“Affiliate” means with respect to any Person, any other Person that directly or indirectly controls, is under common control with, or is controlled by such Person.

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

“Agency Documents” means the Phase III Facility Company Lease, the Phase III Facility Lease Agreement, the Phase III Facility Environmental Compliance and Indemnification Agreement, the Phase III Facility PILOT Agreement, the Phase III Facility Recapture Agreement and the Phase III Facility Agency Compliance Agreement.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on June 19, 2013 and amended on January 15, 2014, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

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

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

“Closing Date” means February 18, 2014.

“Company” means CV Village at Coram, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Company Documents” means the Phase III Facility Bill of Sale, the Phase III Facility Company Lease, the Phase III Facility Lease Agreement, the Phase III Facility Environmental Compliance and Indemnification Agreement, the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement.

“Completion Date” means the date of completion of the Phase III Facility as certified pursuant to Section 4.3 of the Phase III Facility 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 the period (a) beginning on the earlier of (i) the date of commencement of acquisition, demolition, construction and equipping of the Phase III Facility, which date shall not be prior to June 19, 2013 or (ii) the Closing Date, and (b) ending on the Completion Date.

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

“Facility” means, collectively the Phase I Facility, the Phase II Facility and the Phase III Facility.

“Facility Services” means all services necessary for the acquisition, demolition, construction and equipping of the Phase III Facility.

“FTE” shall have the meaning set forth in Section 8.13 hereof.

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

“Indemnified Parties” shall have the meaning set forth in Section 8.2 hereof.

“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 or the Company.

“Land” shall have the meaning ascribed thereto in the recitals of the Phase III Facility Lease Agreement.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Phase III Facility Lease Agreement.

“Lender” means any lender making a Loan to the Company to finance in whole or in part the acquisition, remediation and development of the Phase III Facility or any portion of the Phase III Facility.

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

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

“Member” means Conifer Realty, LLC.

“Mortgage” means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Phase III Facility in favor of the Lender as security for such Lender’s Loan to the Company.

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

“Permitted Encumbrances” means, with respect to the Phase III Facility, (i) Phase III Facility Company Lease, (ii) exceptions to title set forth in the Title Report, (iii) the Phase III Facility Lease Agreement, (iv) the Phase III Facility Sublease, (v) 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, (vi) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vii) Liens for taxes not yet delinquent, (viii) any Mortgage granted to a Lender, (ix) approved tenants and (x) the Phase III Facility Recapture Agreement.

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

“Phase III Equipment” means all machinery, equipment and other personal property used and to be used in connection with Phase III Facility as described in Exhibit B to the Phase III Facility Lease Agreement.

“Phase I Facility” shall have the meaning ascribed thereto in the recitals of the Phase III Facility Lease Agreement.

“Phase II Facility” shall have the meaning ascribed thereto in the recitals of the Phase III Facility Lease Agreement.

“Phase III Facility” means collectively, the Phase III Land, the Phase III Improvements and the Phase III Equipment subleased and leased to the Company under the Phase III Facility Lease Agreement.

“Phase III Facility Agency Compliance Agreement” means the Phase III Facility Agency Compliance Agreement for the Phase III Facility, dated as of February 1, 2014, by and between the Phase III Sublessee and the Agency, as amended from time to time.

“Phase III Facility Bill of Sale” means the Phase III Facility Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the equipment, as the same may be amended from time to time.

“Phase III Facility Company Lease” means the Phase III Facility Company Lease Agreement, dated as of February 1, 2014, by the Company, as lessor, and the Agency, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Phase III Facility Environmental Compliance and Indemnification Agreement” means the Phase III Facility Environmental Compliance and Indemnification Agreement, dated as of February 1, 2014, by and among the Agency, the Company and the Phase III Sublessee, as amended from time to time.

“Phase III Facility PILOT Agreement” means the Phase III Facility Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2014, by and among the Company, the Phase III Sublessee and the Agency, as amended from time to time.

“Phase III Facility Lease Agreement” means the Phase III Facility Lease Agreement, dated as of February 1, 2014, by and between the Agency, as sublessor, and the Company, as sublessee, with respect to the Phase III Facility, as the same may be amended from time to time.

“Phase III Facility Recapture Agreement” means the Phase III Facility Recapture Agreement for the Phase III Facility, dated as of February 1, 2014, by and among the Company, the Phase III Sublessee and the Agency, as amended from time to time.

“Phase III Facility Sublease Agreement” means the Sublease Agreement, dated as of February 1, 2014, by and between the Company, as sublessor and the Phase III Sublessee, as sublessee.

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

“Phase III Land” means the real property leased by the Agency to the Company pursuant to the Phase III Facility Lease Agreement and more particularly described in Exhibit A-3 attached thereto.

“Phase III Sublessee” means Wincoram Commons Commercial, LLC, a limited liability company, organized and existing under the laws of the State of New York, and its successors and assigns.

“Phase III Sublessee Documents” means the Phase III Facility Sublease Agreement, the Phase III Facility PILOT Agreement, the Phase III Facility Recapture Agreement and the Phase III Facility Environmental Compliance and Indemnification Agreement.

“Plans and Specifications” means the plans and specifications, if any, for the Phase III Improvements, prepared for the Company, as revised from time to time in accordance with the Phase III Facility Lease Agreement.

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

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

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

“Recapture Event” shall have the same meaning assigned thereto in the Phase III Facility Recapture Agreement.

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

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

“State” means the State of New York.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Phase III Facility.

“Tenant Agency Compliance Agreement” means an agreement in the form attached to the Phase III Facility Lease Agreement as Exhibit D between the Agency and a commercial sublessee of the Phase III Facility.

“Title Report” means Certificate of Title No. CL110078884CO-C issued by Chicago Title Insurance Company to the Agency on February 5, 2014, and redated and recertified on the Closing Date.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

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

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a), 10.4, 11.1, 11.2(b), 11.3 and 12.8 of the Phase III Facility Lease Agreement and all payments due under the Phase III Facility PILOT Agreement and the Phase III Facility Recapture Agreement.