

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

and

EXCEL HOLDINGS 6 LLC

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AMENDED AND RESTATED LEASE AGREEMENT

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Dated as of December 1, 2015

Town of Brookhaven Industrial Development Agency  
(Assignment of Sayville Browning Properties, Inc./  
Browning Extended Stay, LLC Facility)

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THIS AMENDED AND RESTATED LEASE AGREEMENT, dated as of December 1, 2015 (this “**Amended and Restated Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 1 Independence Hill, 3<sup>rd</sup> Floor, Farmingville, New York 11738 (the “**Agency**”), and EXCEL HOLDINGS 6 LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having an office at 1901 Fort Myers Drive, Arlington, Virginia 22209 (the “**Company**”).

## RECITALS

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

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

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

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, together with 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 Facility defined below; and

WHEREAS, the Agency previously assisted Sayville Browning Properties, Inc., a New York business corporation (the “**Assignor**”), and Browning Extended Stay, LLC, a New York limited liability company (the “**Sublessee**”), in (a) the construction of an approximately 102,225 square foot building (the “**Improvements**”), on an approximately 2.45 acre parcel of land located at 65 Union Avenue, Ronkonkoma, Town of Brookhaven, Suffolk County, New York, (more particularly known as S.C. Tax Map: District 0200, Section 800, Block 02, Lot 024) (the “**Land**”), together with additional parking and various related site improvements and the acquisition of hotel related furniture, fixtures and equipment not part of the Equipment (as hereinafter defined) (the “**Facility Equipment**”; and together with the Land and the Improvements, the “**Company Facility**”), and (b) the acquisition and installation of certain equipment and personal property including hotel related furniture, fixtures and

equipment (the “**Sublessee Equipment**”; and together with the Company Facility, the “**Facility**”), which Sublessee Equipment was leased to the Sublessee and which Facility was to be used as an approximately 122 room hotel to provide a full range of services to the business and leisure traveler visiting the Town of Brookhaven; and

WHEREAS, the Assignor leased the Land to the Agency pursuant to certain Company Lease Agreement, dated as of November 1, 2014 (the “**Original Company Lease Agreement**”), between the Assignor, as lessor and the Agency, as lessee; and

WHEREAS, the Agency leased the company Facility to the Assignor pursuant to a certain Lease Agreement, dated as of November 1, 2014 (the “**Sayville Lease Agreement**”), between the Agency as lessor, and the Assignor, as lessee; and

WHEREAS, the Assignor subleased the Facility to the Sublessee pursuant to a certain Sublease Agreement, dated November 19, 2014 (the “**Sublease Agreement**”); and

WHEREAS, the Agency leased the Sublessee Equipment to the Sublessee pursuant to the terms of a certain Equipment Lease Agreement, dated as of November 1, 2014 (the “**Equipment Lease Agreement**”; and together with the Sayville Lease Agreement, the “**Original Lease Agreement**”) (the Sublessee Equipment, together with the Facility Equipment are collectively referred to herein as, the “**Equipment**”); and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Assignor and the Sublessee, entered into a certain Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2014 (the “**Original PILOT Agreement**”), whereby the Assignor and the Sublessee agreed to make certain payments-in-lieu-of-taxes on the Facility to the Taxing Authorities (as defined therein); and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Assignor and the Sublessee entered into a certain Environmental Compliance and Indemnification Agreement, dated as of November 1, 2014 (the “**Original Environmental Compliance and Indemnification Agreement**”), whereby, among other things, the Assignor and the Sublessee agreed to comply with all Environmental Laws (as defined in the Environmental Compliance and Indemnification Agreement) applicable to the Facility; and

WHEREAS, the Assignor and the Sublessee entered into a Recapture Agreement, dated as of November 1, 2014 (the “**Original Recapture Agreement**”), from the Assignor and the Sublessee to the Agency in order to reflect the repayment of certain obligations of the Assignor and the Sublessee upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Company has now requested the Agency’s consent to the assignment by the Assignor and the Sublessee of all of their respective rights, title, interest and obligations under the Original Company Lease, Original Lease Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement, the Original Recapture Agreement and certain other agreements in connection with the Facility to, and the assumption by the Company of all of such rights, title, interest and

obligations of the Assignor and the Sublessee, and the release of the Assignor and the Sublessee from any further liability with respect to the Facility subject to certain requirements of the Agency; and

WHEREAS, pursuant to a certain Assignment, Assumption and Amendment Agreement, dated as of December 1, 2015 (the “**Assignment, Assumption and Amendment Agreement**”), by and among the Agency, the Assignor, the Sublessee and the Company, the Company will assume all of the right, title, interest, liability, duty and obligations of the Assignor and the Sublessee with respect to the Facility under the Original Company Lease, the Original Lease Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement and the Original Recapture Agreement including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor and the Sublessee under the Original Company Lease, the Original Lease Agreement, the Original PILOT Agreement, the Original Environmental Compliance and Indemnification Agreement and the Original Recapture Agreement; and

WHEREAS, the Original Company Lease shall be amended pursuant to and in accordance with the Assignment, Assumption and Amendment Agreement (collectively, the “**Company Lease**”); and

WHEREAS, the Original Lease Agreement shall be amended pursuant to this Amended and Restated Lease Agreement (the Original Lease Agreement, as amended and assigned by the Assignment, Assumption and Amendment Agreement and this Amended and Restated Lease Agreement shall be referred to herein as, this “**Lease Agreement**”); and

WHEREAS, the Original PILOT Agreement shall be amended and restated pursuant to and in accordance with a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of December 1, 2015 (the “**Amended and Restated PILOT Agreement**”); and together with the Original PILOT Agreement and the Assignment, Assumption and Amendment Agreement, the “**PILOT Agreement**”), by and between the Agency and the Company; and

WHEREAS, in connection with the foregoing the Agency and the Assignee will enter into an Amended and Restated Recapture Agreement, dated as of December 1, 2015 (the “**Amended and Restated Recapture Agreement**”); and together with the Original Recapture Agreement, and the Assignment, Assumption and Amendment Agreement, the “**Recapture Agreement**”), in order to reflect the repayment of certain obligations of the occurrence of the Assignee upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Original Environmental Compliance and Indemnification Agreement shall be amended pursuant to and in accordance with the Assignment, Assumption and Amendment Agreement (collectively the “**Environmental Compliance and Indemnification Agreement**”).

#### 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 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 has acquired or will acquire a leasehold interest in or title to the Facility, caused or will cause the Improvements to be constructed, the Facility Equipment and the Equipment to be acquired and installed and will lease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) Reserved.

(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, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, 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 Lease Agreement by the undertaking of the Company to utilize the 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 purposes of this 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 Delaware and authorized to transact business in the State of New York, is in good standing under the laws of the State of New York and the State of Delaware, 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 Operating Agreement or Articles of Organization, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Operating Agreement or Articles of Organization, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Company shall use commercially reasonable efforts to ensure that the Facility and the design, acquisition, 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 Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability, including reasonable attorneys' fees, resulting from any failure by the Company to so conform.

(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.

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

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

(g) The Company hereby represents to the Agency that the Agency's involvement with the Facility will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or in the abandonment of one or more plants of the Facility occupant(s) located in the State, unless the Agency's involvement with the Facility (i) is reasonably necessary to discourage the Facility occupant(s) from removing such other plant or facility to a location outside the State, or (ii) is reasonably necessary to preserve the competitive position of the Facility occupant(s) in their respective industry.

(h) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, 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(f) and (g) and 9.3 of this Lease Agreement provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without limiting the generality of the foregoing, the Company will provide the Agency with any and all information and materials describing proposed Facility occupants as necessary.

(i) The Company hereby represents and warrants that while the Facility will be used in making retail sales to customers who personally visit the Facility and would be considered a "retail facility" in accordance with the provisions of Section 862(2)(a) of the Act, the Facility is a "Tourism Destination" as defined in Section 862(2)(a) of the Act and therefore not subject to the prohibitions on retail facilities contained in Section 862(2)(a) of the Act.

### ARTICLE 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 a leasehold interest in or lien-free title to the Facility, except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to or a leasehold interest in the Equipment and Improvements acquired after the date hereof.

Section 3.2 Title Indemnity. The Company, at its sole cost and expense, will indemnify, defend and save harmless the Agency from and against any and all claims, liabilities and expenses (including attorney's fees whether because of a third party claim or because of a proceeding to enforce these indemnity provisions) arising, directly or indirectly, out of questions, claims or defects with respect to the Agency's leasehold interest in the Facility.

Section 3.3 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not “Property” as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the subleasehold and leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold and subleasehold interests therein secure the obligations of the Company to the Agency under the PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company’s obligation to acquire, construct, equip and maintain the Facility on behalf of the Agency and the Company’s obligation to indemnify and hold harmless the Agency.

ARTICLE IV  
ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY

Section 4.1 Acquisition, Construction and Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, construct and equip the Facility 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 which approval by the Agency will not be unreasonably withheld or delayed but may be subject to such reasonable conditions imposed by the Agency in accordance with the Act or the Agency’s policies and procedures.

(c) Except as set forth in Section 6.2 hereof, fee or leasehold title, as applicable, to all materials, equipment, machinery and other items of Property incorporated or installed in or placed in, upon, or under the 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 its true and lawful agent, and the Company hereby accepts such agency (i) to acquire, construct and equip the 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 and equipping the Facility 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 construction and equipping of the Facility from funds made available therefor in accordance with this 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 construction and equipping of the Facility, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company 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 the Civil Rights Law of the State applicable to the construction and equipping of the Facility and shall include in all construction contracts all provisions that shall be required to be inserted therein by such provisions. The Company shall 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 preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 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 (the "**Loan**") to finance and refinance the costs of the acquisition, construction and equipping of the Facility or to reimburse the Company for the cost of acquiring, constructing and equipping the Facility. Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose, which address each such Lender may change from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "**Loan Documents**"), provided that such documents and instruments shall contain the provisions set forth in Exhibit D attached hereto and made a part hereof. 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 such instruments.

Section 4.3 Certificates 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 stating (a) that the acquisition, construction and equipping of the Facility has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such acquisition, constructing and equipping has been made or provided for; and (ii) such other certificates as may be reasonably satisfactory to the Agency, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to use reasonable efforts to complete the acquisition, construction and equipping of the Facility by November 30, 2016.

Section 4.4 Completion by Company.

(a) In the event Net Proceeds of the Loan, if any, are not sufficient to pay in full all costs of acquiring, constructing and equipping the Facility in accordance with the Plans and Specifications, the Company agrees to pay, for the benefit of the Agency and such Lender, if any, all such sums as may be in excess of Net Proceeds of such Loan, if any.

(b) The Company shall not be entitled to any reimbursement for such excess cost or expense incurred by the Company in accordance with Section 4.4(a) from the Agency, nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Lease Agreement.

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

Section 4.6 Sales Tax Exemption.

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

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

(i) The Sales Tax Exemption shall be effective only for a term

commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, (C) the date on which the Company receives the Maximum Sales Tax Savings Amount, or (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2.

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

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

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

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

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

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

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

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

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

- (i) General Municipal Law Section 874(9) and Form ST-60 and the regulations relating thereto require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Accordingly, for each Agent, the Company must complete and submit Form ST-60 to the Agency.
- (ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit E, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company. The Company shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.
- (iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

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

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

purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

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

(h) Special Provisions Relating to State Sales Tax Savings.

- (i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.
- (ii) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Savings Amount or which are for



property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(i) Subject to the provisions of Section 4.6(h) hereof, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 4.6.

## ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby subleases and leases the Facility, consisting of the Land as more particularly described in Exhibit A attached hereto, the Improvements and the Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this 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 Facility (subject to Sections 3.3, 8.3 and 10.2 hereof), and the leasehold and subleasehold

estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:59 p.m. on November 30, 2026 (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 Facility and will, at the request of the Company and at the Company’s sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

**Section 5.3 Rents and Other Amounts Payable.**

(a) The Company shall pay the Agency on the Closing Date the balance of the Agency’s administrative fee in the amount of \$112,209 (equal to the administrative fee of \$110,625, plus the public hearing notice and transcript costs of \$1,584)<sup>1</sup>. The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each and every 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 on or before January 1 of each year commencing January 1, 2016 and continuing through the Lease Term.

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) by reason of the Agency’s ownership, leasing, subleasing, or financing of the Facility, or (ii) in connection with the carrying out of the Agency’s duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this 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.

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

**Section 5.4 Obligations of Company Hereunder Unconditional.** 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

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<sup>1</sup> The Administrative Fee is inclusive of the Administrative Fee for the assignment and assumption of the Agency’s Sayville Browning Properties, Inc./Browning Hotel Associates, LLC Facility).

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, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

The Company and the Agency hereby agree that the obligations and liabilities of the Company hereunder are the absolute and unconditional obligations and liabilities of the Company and not the obligations and liabilities of any officer, director or employee of the Company, and that no officer, director or employee of the Company shall have any obligation or liability hereunder, except arising in connection with the gross negligence, recklessness, willful misconduct or criminal activity of such officer, director or employee of the Company.

Section 5.5 Payment of Additional Moneys in Prepayment of Loan. In addition to any other moneys required or permitted to be paid pursuant to this Lease Agreement, the Company may, subject to the terms of any Note and any Mortgage, pay moneys to any Lender to be used for the prepayment of any Loan at such time or times and on such terms and conditions as is provided in such Note and such Mortgage.

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 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 Facility from the date of such payment until the scheduled expiration of the Lease Term, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of any such Lender, or the Company may, at its option, terminate this Lease Agreement in accordance with Article XI hereof and require the Agency to convey the Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment or the making of any such provision, 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 Facility or this Lease Agreement.

## ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

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

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

(b) With the written consent of the Agency, the Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

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

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the exemptions from real property taxes as provided under the PILOT Agreement and the Sales Tax Exemption, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, 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 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 Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the PILOT Agreement and the 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 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 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 Lease Agreement.

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

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the 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 cause to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the 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 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 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 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 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 Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the 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.

(b) The policies (or certificates or binders) of insurance required by Section 6.4(a), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the policy (or certificates or binders) of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency and any Lender before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no

longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) 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, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, payments in lieu of taxes pursuant to the 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 Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(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 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 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) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this 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 a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

## ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.



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

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

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

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

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

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

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

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

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

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

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

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

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such 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 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 of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall exercise its option to terminate this 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 and the balance shall be delivered to the Company. If an Event of Default hereunder shall have occurred and will be continuing and the Agency shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(f) 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.

Section 7.2 Condemnation.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the 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;

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company, or if there is a Mortgage in effect, to the Lender pursuant to the terms of the Mortgage and except as otherwise provided in Section 11.1 and subsection (e) hereof, applied by such Lender pursuant to the terms of the Mortgage; and

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

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

- (i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;
- (ii) the Facility or the Substitute Facilities shall continue to constitute a “project” as such term is defined in the Act;
- (iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and
- (iv) any other conditions the Agency may reasonably impose.

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

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, 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 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, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall exercise its option to terminate this 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 Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall belong to the Company.

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

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

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

## ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

### Section 8.2 Hold Harmless Provisions.

(a) Subject to the Assignment, Assumption and Amendment Agreement, 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 directors, 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 Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land, or (ii) liability arising from or expense incurred in connection with the Agency's acquisition, constructing, equipping, owning, leasing and subleasing of the Facility, including without limiting the generality of the foregoing all claims arising from the

breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) and Section 4.6 of this Lease Agreement, all claims arising from the breach of any of the Company's covenants contained in Section 8.8 hereof, and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. 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 Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the 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 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 Facility. The Agency and its duly authorized agents shall have the right at all reasonable times on reasonable notice to inspect the Facility.

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

with or merge into it, except with consent of the Agency, which shall not be unreasonably withheld or delayed or conditioned.

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 Facility in compliance with Sections 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 for the Agency to comply with Section 874(9) of the GML. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the 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.

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.

Section 8.8 Compliance with Orders, Ordinances, Etc.

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

(b) The Company shall keep or require the Facility to be kept free of Hazardous Substances, except in compliance with applicable law. Without limiting the foregoing, the Company shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the 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 Facility or onto any other property. The Company shall comply with and require 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 require 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 on, from or affecting the Facility (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, and (B) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) subject to the Assignment, Assumption and Amendment Agreement, defend, indemnify and hold harmless the Agency, and its members, employees, agents, officers 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 at the 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, 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. 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 shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

(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), 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 or the Company shall immediately provide legal protection and/or pay amounts necessary, in the 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 retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances as provided in the Environmental Compliance and Indemnification Agreement. 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 Company.

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

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

(b) Notwithstanding the provisions of subsection (a) 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 shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture, in 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, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the notice thereof.

Section 8.10 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was 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 Facility and to any investment credit with respect to any part of the Facility.



Section 8.12 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the “**Referral Agencies**”). The Company also agrees, and shall cause any and all sublessees 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 Facility. The Company hereby agrees to create and maintain at the Facility forty-five (45) full time equivalent (“**FTE**”) jobs at the Facility based upon a 35 hour work week as of December 31, 2016, and fifty-eight (58) FTE jobs at the Facility based upon a 35 hour work week as of December 31, 2017 (including the FTE of all tenants at the Facility) and continuing thereafter until the end of the Lease Term.

Section 8.14 Compliance with the Act. The Company hereby agrees to comply with New York General Municipal Law Section 875. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to Section 4.1(d) and Section 4.6 hereof is subject to termination and recapture of benefits pursuant to Section 875 and the Recapture Agreement.

ARTICLE IX  
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

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

Section 9.2 Removal of Equipment.

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

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

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

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not unreasonably be withheld or delayed, but subject to the dates of the Agency's board meetings. Any assignment or 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 thereto which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency's board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) the assignee 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 Lease Agreement shall be adversely affected thereby;

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

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

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

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

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

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

Section 9.4 Mortgage and Pledge of Agency’s Interests 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 Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights), to the Lender as security for the payment of the principal of and interest on the Loan in each case in accordance with the provisions attached hereto as Exhibit D. 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 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 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.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this 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 Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and any Lender and shall, upon request, furnish to the Company and any Lender, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.6(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company or any Lender may reasonably request.

ARTICLE X  
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement:

- (i) the failure by the Company to pay or cause to be paid, on the date due, the amount specified to be paid pursuant to Section 5.3(a) and (b) hereof, which such failure remains uncured for five (5) days after notice thereof;
- (ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(f), (g) or (i), 4.6, 6.3, 6.4, 6.5, 8.2, 8.4, 8.6, 8.13, 8.14, 9.3 and 10.6 hereof;
- (iii) the failure by the Company to pay or cause to be paid, on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement;
- (iv) the invalidity, illegality or unenforceability of the PILOT Agreement, or the failure of the Company to observe and perform any material covenant contained in the PILOT Agreement;
- (v) any representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading in any material respect;
- (vi) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (vii)) for a period of thirty

(30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency; provided; however, that in the event such covenant, condition or agreement is not capable of being observed or performed within thirty (30) days after written notice but the Company is proceeding diligently and in good faith to cure such default, then the Company shall be permitted an additional ninety (90) days within which to remedy the default;

(vii) 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; or the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing;

(ix) an Event of Default under any other documents executed and delivered in connection with any Mortgage shall have occurred and be continuing;

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

(xi) an Event of Default under the Environmental Compliance and Indemnification Agreement shall have occurred and be continuing; or

(xii) the occurrence and continuation of a Recapture Event under the Recapture Agreement.

(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, 6.1 and 8.13 of this 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 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.

Section 10.2 Remedies on Default.

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

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

(ii) after written notice to the Company, terminate this Lease Agreement and the Company Lease and terminate the PILOT Agreement and the Sales Tax Exemption authorization. The Agency shall have the right to execute appropriate lease termination documents with respect to the Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination 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) 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 PILOT Agreement and the Recapture Agreement, and to enforce the obligations, agreements and covenants of the Company under this Lease Agreement and under the PILOT Agreement and the Recapture Agreement.

(b) Any sums payable to the Agency as a consequence of any action taken pursuant to this Section 10.2 (other than those sums attributable to Unassigned Rights) shall be paid to any Lender and applied to the payment of any Loan.

(c) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under the PILOT Agreement, except that upon termination of this Lease Agreement pursuant to Section 10.2(a)(ii), the PILOT Agreement shall terminate.

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

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this 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 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 no later than January 15, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Lease Agreement and that no Event of Default exists under this Lease Agreement, the PILOT Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.6 hereof.

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

Section 11.2 Conditions to Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 5.2, 10.2 or 11.1 hereof, the Company shall make or cause to be made the following payments:

(a) To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 11.3 hereof.

(b) To the Agency: the purchase price with respect to the Equipment of one dollar (\$1.00).

(c) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.

(d) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

Section 11.3 Conveyance on Termination. At the closing of any termination of the Lease Agreement, the Agency shall, upon receipt or expiration of the amounts payable pursuant to Section 11.2 hereof, deliver and request the Lender, if any, to deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease, subject in each case only to the following: (A) any Liens to which leasehold estate 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 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 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, or (B) if applicable, to discharge and release the Mortgage and any other security interest held by such Lender. Upon the termination of the Lease Agreement pursuant to this Article XI, the 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, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 3<sup>rd</sup> Floor  
Farmingville, New York 11738  
Attention: Lisa MG Mulligan, Chief Executive Officer

To the Assignee:

Excel Holdings 6 LLC  
1901 Fort Myers Drive  
Arlington, Virginia 22209  
Attention: Shoham Amin, Managing Partner

With a copy to:

Jaspan Schlesinger LLP Attorneys At Law  
300 Garden City Plaza  
Garden City, New York 11530-3324  
Attention: Stephen P. Epstein, Esq.

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

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

Section 12.3 Severability. In the event any provision of this Lease Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 12.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Applicable Law. This 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 Equipment; Further Assurances.

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

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

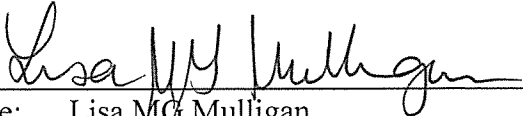
Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 12.10 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

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

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of December 1, 2015.

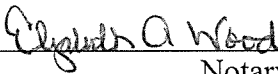
**TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY**

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

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

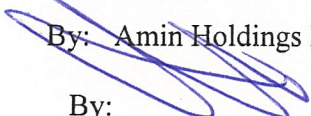
On the 22nd day of December in the year 2015, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed 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.

**ELIZABETH A. WOOD**  
Notary Public, State of New York  
Registration # 01WO6103025  
Qualified in Monroe County  
Certificate Filed in Monroe County  
Commission Expires: 12/15/2019

  
Notary Public

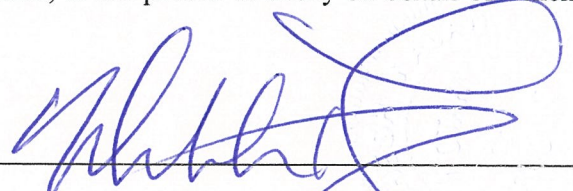
**EXCEL HOLDINGS 6 LLC**

By: Amin Holdings I, LLC

By:   
Name: Shoham Amin  
Title: Manager

STATE OF NEW JERSEY    )  
  : SS.:  
COUNTY OF MIDDLESEX    )

On the 20 day of December in the year 2015, before me, the undersigned, personally appeared **Shoham Amin**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public    MAHESH RAJAN  
Notary Public of New Jersey  
I.D. # 2289859  
Commission Expires 7/17/2017

EXHIBIT A  
Legal Description of Real Property

**Exhibit A**  
**Legal Description**

**Parcel 3 (024.000) (Vacant Land)**

ALL that certain plot, piece or parcel of land, situate, lying and being in Ronkonkoma, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follow:

BEGINNING at a point being the intersection of the Northerly R.O.W. line of Union Avenue with the westerly lien of Mill Road. Running thence in the westerly direction of the following five (5) courses and distance:

RUNNING THENCE North 86 degrees 31 minutes 50 seconds West 320.79 feet;

THENCE North 2 degrees 15 minutes 45 seconds East 265 feet;

THENCE South 86 degrees 31 minutes 50 seconds East 503.08 feet;

THENCE South 41 degrees 17 minutes 40 seconds West 208.94 feet;

THENCE South 29 degrees 23 minutes 45 seconds West 111.08 feet; to the point or place of BEGINNING.

Said described parcel containing 106,747 s.f. and is shown on a map that has been prepared for the parcel by LAND DESIGN ASSOCIATED Revised 11/02/15.

## EXHIBIT B

### Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the completion of the Town of Brookhaven Industrial Development Agency's Sayville Browning Properties, Inc./Browning Extended Stay, LLC 2014 Facility located at 65 Union Avenue, in Ronkonkoma, Town of Brookhaven, Suffolk County, New York.

## EXHIBIT C

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

The purpose of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in 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 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 and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in compliance with the Labor Law; and

(b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law of the State of New York (the “**Labor Law**”), including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to encourage the Company to voluntarily comply with such provisions.

II. To the extent required by law, the Company agrees that each contract or subcontract for the construction, construction and equipping of the Facility shall provide:

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

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, construction, construction and equipping of the Facility, discriminate against or intimidate



any employee hired for the performance of work involved in acquiring, constructing, constructing and equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and

(c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

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

## EXHIBIT D

### Mortgage Requirements

Any Mortgage which shall be entered into by the Agency and the Company shall contain the following required provisions:

#### 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 agent (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 the Town of Brookhaven, Suffolk County and neither the State of New York nor the Town of Brookhaven, 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 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, renovating, equipping, installation, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein 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 Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the Mortgagee shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend and restate the Mortgage, in order to remove the Agency as a party thereto.

EXHIBIT E

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE:** \_\_\_\_\_ 1, 201\_

**ELIGIBLE LOCATION:**  
**[65 Union Avenue, Ronkonkoma, New York]**

\_\_\_\_\_, 201\_

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency  
(Sayville Browning Properties, Inc./Browning Extended Stay, LLC  
Facility)

Ladies and Gentlemen:

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

1. Pursuant to a certain Lease Agreement, dated as of December 1, 2015 (the "Lease Agreement"), between the Agency and Excel Holdings 6 LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having an address of 1901 Fort Myers Drive, Arlington, Virginia 22209 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

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

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

Exhibit E-1

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

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

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

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

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

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

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

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

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

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

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

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

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

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

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

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

**TOWN OF BROOKHAVEN  
INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:

          **[AGENT]**          

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



## Exhibit A

### To SALES TAX AGENT AUTHORIZATION LETTER

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

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

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

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

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be

replaced whenever the substance is consumed; and

(vii) maintenance of the type as shall constitute janitorial services.

**Exhibit B**

To

**SALES TAX AGENT AUTHORIZATION LETTER**

**SALES TAX REGISTRY**

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 201\_\_ to [JUNE 30][DECEMBER 31], 201\_\_

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:</b>	
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Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Town of Brookhaven Industrial Development Agency ("TOBIDA"), and may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: \_\_\_\_\_

Signature By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT F

**Sales Tax Registry**

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

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

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

Lessee Name: \_\_\_\_\_

Signature By: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## 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.

“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 Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the Recapture Agreement.

“Agent” shall have the meaning set forth in Section 4.6(c).

“Amended and Restated Lease Agreement” means the Lease Agreement, dated as of December 1, 2015, by and between the Agency and the Company.

“Amended and Restated PILOT Agreement” means the Payment-in-Lieu-of-Tax Agreement, dated as of December 1, 2015, by and between the Agency and the Company.

“Amended and Restated Recapture Agreement” means the Amended and Restated Recapture Agreement, dated as of December 1, 2015 by and between the Agency and the Company.

“Assignment, Assumption and Amendment Agreement” means the Assignment, Assumption and Amendment Agreement, dated as of December 1, 2015 by and among the Agency, the Assignor, the Sublessee and the Company.

“Assignor” means Sayville Browning Properties, Inc., a New York business corporation.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on November 18, 2015 authorizing the Assignment, Assumption and Amendment Agreement and related documents.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary or the Administrative Director of the Agency; in the case of the Company, its Manager; and, in the case of both, 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 Bank and to the Agency 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 Secretary or the Administrative Director of the Agency, or (ii) the Company by its Manager or any Vice President of the Company

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

“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 Bank is located are authorized by law or executive order to remain closed.

“Closing Date” means (i) with respect to the Sayville Browning Properties, Inc./Browning Extended Stay, LLC 2014 Facility, November 19, 2014, and (ii) with respect to the Assignment, Assumption and Amendment Agreement, December 22, 2015.

“Company” means Excel Holdings 6 LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns.

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

“Company Lease” means the Company Lease Agreement, dated as of November 1, 2014, by and between the Assignor and the Agency.

“Completion Date” means the date of completion of the Facility as certified pursuant to Section 4.3 of the 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 beginning on the date of commencement of the construction and equipping of the Facility, and ending on the Completion Date.

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

“Environmental Compliance and Indemnification Agreement” means, the Environmental Compliance and Indemnification Agreement, dated as of November 1, 2014, as assigned and amended by the Assignment, Assumption and Amendment Agreement.

“Equipment” means, collectively, the Facility Equipment and the Sublessee Equipment.

“Equipment Lease Agreement” means the Equipment Lease Agreement, dated as of November 1, 2014 by and between the Agency and the Sublessee, as assigned and amended by the Assignment, Assumption and Amendment Agreement and the Amended and Restated Lease Agreement.

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

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

“Facility Equipment” means all machinery, equipment and other personal property to be used in connection with the Facility and sold to the Agency pursuant to a Bill of Sale dated November 19, 2014, and leased to the Assignor pursuant to the Original Lease Agreement, and assigned to the Company pursuant to the Assignment, Assumption and Amendment Agreement and the Amended and Restated Lease Agreement.

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

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

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

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

“FTE” shall have the meaning set forth in Section 8.13 of the Lease Agreement.

“Hazardous Substance” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous

or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law (as defined in the Environmental Compliance and Indemnification Agreement) and the regulations promulgated thereunder.

“Improvements” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, and (ii) not part of the Equipment, all as they may exist from time to time.

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

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

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

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

“Lease Agreement” means collectively, the Original Lease Agreement and the Equipment Lease Agreement, as assigned and amended by the Assignment, Assumption and Amendment Agreement and the Amended and Restated Lease Agreement.

“Lease Term” means the duration of the leasehold and subleasehold estate created in the Lease Agreement as specified in Section 5.2 of the Lease Agreement.



“Lender” means any lender making a Loan to the Company secured by a Mortgage on the Facility or a pledge of interests in the Company.

“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, which Loan is secured by a Mortgage on the Facility or a pledge of interests in the Company, in connection with the financing, refinancing of the acquisition, construction and equipping of the Facility.

“Loan Documents” means the documents executed and delivered to the Lender in connection with the Loan.

“Maximum Sales Tax Amount” shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal \$612,203, or such maximum dollar amount as increased by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“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 Facility in favor of the Lender as security for such Lender’s Loan to the Company, in connection with the financing, refinancing of the Acquisition, construction and equipping of the Facility.

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

“Note” means a promissory note given by the Company to the Lender evidencing the Loan for the Facility.

“Original Company Lease” means the Company Lease Agreement, dated as of November 1, 2014, by and between the Assignor and the Agency.

“Original Lease Agreement” means, collectively, the Sayville Lease Agreement and the Equipment Lease Agreement.

“Original Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of November 1, 2014, by and between the Agency and the Assignor.

“Original PILOT Agreement” means the Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2014, by and among the Agency, the Assignor and the Sublessee.

“Original Recapture Agreement” means the Recapture Agreement, dated as of November 1, 2014, by and among the Agency, the Assignor and the Sublessee.

“Permitted Encumbrances” means (i) exceptions to title set forth in the Title Report, (ii) the Mortgage, (iii) the Company Lease, (iv) the Lease Agreement, (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 Bank or its Counsel, (vii) Liens for taxes not yet delinquent, and (viii) the Recapture Agreement.

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

“PILOT Agreement” means, collectively, the Original PILOT Agreement, as amended and assigned by the Assignment, Assumption and Amendment Agreement and the Amended and Restated PILOT Agreement.

“Plans and Specifications” means the plans and specifications for the Improvements, prepared for the Company and approved by the Lender and the Agency, as revised from time to time in accordance with the Lease Agreement.

“Prime Rate” means 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, 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.

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 4.6(c) of the Lease Agreement.

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

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

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

“Sales and Use Taxes” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

“Sayville Lease Agreement” means the Lease Agreement, dated as of November 1, 2014, by and between the Agency and the Assignor.

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

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

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

“Sublessee” means Browning Extended Stay, LLC, a New York limited liability company.

“Sublessee Equipment” means all machinery, equipment and other personal property to be used in connection with the Facility and sold to the Agency pursuant to an Equipment Bill of Sale, dated November 19, 2014, leased to the Sublessee pursuant to the Equipment Lease Agreement, and assigned to the Company pursuant to the Assignment, Assumption and Amendment Agreement.

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

“Termination Date” shall mean such date on which the Sales Tax Exemption shall terminate pursuant to Section 4.6(b)(i) of the Lease Agreement.

“Title Report” means Certificate of Title No. 82588 issued by Stewart Title Guaranty Company to the Agency on December 11, 2015, 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 Loan Documents.

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