

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(Brookhaven, New York)

and

CRESTWOOD FARMS, INC.
CRESTWOOD DISTRIBUTION LLC
NORTH SHORE DAIRY, INC.
WHEY HOME INC.
GREAT AMERICAN DAIRY INC.
LONG ISLAND FARMS INC.

EQUIPMENT LEASE AGREEMENT

Town of Brookhaven Industrial Development Agency
(RPMV REALTY LLC / CRESTWOOD FARMS, INC. FACILITY)

Dated as of June 1, 2015

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- Exhibit A - Reserved
- Exhibit B - Equipment
- Exhibit C - Compliance with Labor Law, Executive Law and Civil Rights Law
- Exhibit D - Form of Sales Tax Agent Authorization Letter
- Exhibit E - Sales Tax Registry

EQUIPMENT LEASE AGREEMENT, dated as of June 1, 2015, by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York, maintaining an office at 1 Independence Hill, Farmingville, New York 11738 (the "Agency"), and CRESTWOOD FARMS, INC. ("Crestwood Farms"), a business corporation, CRESTWOOD DISTRIBUTION LLC ("Crestwood Distribution"), a limited liability company, NORTH SHORE DAIRY, INC. ("North Shore"), a business corporation, WHEY HOME INC. ("Whey"), a business corporation, GREAT AMERICAN DAIRY INC. ("Great American"), a business corporation, and LONG ISLAND FARMS INC. ("Long Island Farm"), a business corporation, each duly organized and validly existing under the laws of the State of New York and maintaining a place of business at 32 Sawgrass Drive, Bellport, NY 11713 (each, the "Sublessee" or "Equipment Lessee", and, collectively, the "Sublessees" or "Equipment Lessees").

RECITALS

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

WHEREAS, RPMV REALTY LLC (the "Company") and the Sublessees have submitted to the Agency a proposal for the Agency (the "Project") (a) to assist with (i) the acquisition of an approximately 1.433 acre parcel of land located at 32 Sawgrass Drive, Bellport, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-843.00-02.00-0026.008) (the "Land"), and the renovation of the approximately 12,000 square foot building located thereon (the "Improvements"), and the acquisition and installation therein of certain equipment not part of the Equipment (as defined herein) (the "Facility Equipment"; together with the Land and Improvements, the "Company Facility"), which Company Facility is to be leased by the Agency to the Company and further subleased by the Company to the Sublessees, (ii) assist with the acquisition and installation therein of certain equipment and personal property (the "Equipment"), which Equipment is to be leased by the Agency to the Sublessees (the Company Facility and the Equipment are collectively referred to herein as the "Facility"), which Facility is to be used by the Sublessees for distribution of milk and food products, (b) to grant mortgage liens thereon and security interests therein, and (c) to provide financial assistance within the meaning of the Act; and

WHEREAS, on June 17, 2015, the Agency adopted its authorizing resolution, by which, among other matters, the Agency determined that the action relating to the acquisition, construction, renovation, equipping, operation, leasing and subleasing of the Facility is an "unlisted" action, as that term is defined in the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and will not have a "significant effect" on the environment and, therefore, an environmental impact statement will not be prepared, such determination constituting a negative declaration for purposes of said law, determined to proceed under the provisions of the Act

to acquire, construct, install, equip, repair, and maintain the Facility, lease the Company Facility from the Company and sublease the Company Facility to the Company, and lease the Equipment to the Sublessees, and to provide "financial assistance" within the meaning of the Act to the Company and Sublessees, including straight leases, and exemptions from taxation in accordance with Section 874 of the Act; and

WHEREAS, a public hearing (the "Hearing") was held on June 10, 2015, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility, could be heard; and

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

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

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

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

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

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

WHEREAS, immediately prior to the execution and delivery of this Equipment Lease Agreement, (a) the Company has or will execute and deliver or cause to be executed and delivered to the Agency (i) a certain Company Lease Agreement (as herein defined) between the Company and the Agency, which conveys to the Agency a leasehold interest in the Land and Improvements, (ii) the Company Facility Equipment Bill of Sale (as herein defined), which conveys to the Agency all right, title and interest of the Company in and to the Facility

Equipment and (iii) the Lease Agreement between the Agency and the Company, under which the Agency leases to the Company the Company Facility; and (b) the Sublessees have or will execute and deliver or cause to be executed and delivered to the Agency the Equipment Bill of Sale (as herein defined), which conveys to the Agency all right, title and interest of the Sublessee in and to the Equipment; and

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

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

WHEREAS, as an inducement to the Agency to enter into this Equipment Lease Agreement and the transactions contemplated hereby, the Company, the Sublessees and/or others will enter into with the Agency a certain Payment In Lieu of Taxes Agreement of even date herewith pertaining to the payment by the Company and the Sublessees of certain payments in lieu of certain real property taxes, a certain Recapture Agreement of even date herewith pertaining to the recovery by the Agency from the Company and the Sublessees of the certain benefits derived by the Company or the Sublessees under or as consequence of the transactions contemplated by the Lease Agreement or the Equipment Lease Agreement, including real property tax abatements, sales and use tax exemptions and mortgage recording tax exemptions, upon the occurrence or failure to occur of certain events, and a certain Agency Compliance and Guaranty Agreement from the Company, Sublessees and certain guarantors of even date herewith providing for, among other matters, assuring the Company's and the Sublessees' compliance with their respective obligations to the Agency.

AGREEMENT

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

ARTICLE I DEFINITIONS AND INTERPRETIONS

The words and terms as used in this Equipment Lease Agreement shall have the meanings and interpretations ascribed thereto in that certain Lease Agreement dated as of June 1, 2015, and executed herewith by and between the Agency, as lessor, and the Company, as lessee, as amended from time to time unless the context or use indicates another or different meaning or intent.

ARTICLE II
REPRESENTATIONS AND COVENANTS

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

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by the Agency Documents, and to carry out its obligations hereunder. Based upon the representations of the Company and the Sublessees, the Facility will constitute a “project”, as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute and deliver the Agency Documents.

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

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

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

(e) On June 10, 2015, following publication of notice of public hearing, the Agency held a public hearing on the transactions contemplated hereby.

(f) By resolution adopted on June 17, 2015, the Agency accepted the application of the Company and the Sublessees, approved the undertaking of the Facility, and authorized all parties to proceed with the transactions contemplated hereby; the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a “significant impact” or “significant effect” on the environment within the meaning of the SEQRA Act.

(g) By resolution, adopted on June 17, 2015, the Agency authorized the execution and delivery of the Agency Documents, and such other instruments as may be necessary or desirable in connection with the transactions contemplated hereby.

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

(a) Each Sublessee is duly organized and validly existing under the laws of the State and has full legal right, power and authority to execute, deliver and perform the Sublessee Documents and by proper company action has been duly authorized to execute, deliver and perform the Sublessee Documents and all other instruments to which the Sublessee is party or by which it is bound in connection with the transactions contemplated hereby.

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

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

(d) The Company Documents each constitute legal, valid and binding obligations of the Company, enforceable against it in accordance with the terms of the agreements.

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

(f) The sole member of the Company and the sole shareholder or member and manager of each Sublessee, as the case may be, is Michael Wiczorek.

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

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

(i) The total cost of the Facility is not, and shall not be, less than \$1,500,000.00 or more than \$1,750,000.00.

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

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

(l) The Company, as sublessor, and Sublessees, as sublessee, will be the sole occupants and users of all portions of the Facility.

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

(n) **The Sublessees acknowledge and agree that the Facility and the interest therein to be conveyed by the Equipment Lease Agreement, are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the interests therein are securing the financial obligations of the Sublessees, and that the Facility and the interest therein have been pledged to secure the Indebtedness of the Sublessees to the Bank. The Facility and the interests therein secure the Sublessees' obligations to the Agency under the Sublessee Documents, and all other instruments to which any Sublessee is party or by which it is bound in connections with the transactions**

contemplated hereby, including the Sublessees' obligation to indemnify and hold harmless the Agency.

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

ARTICLE III
CONVEYANCE OF EQUIPMENT
AND SUBORDINATION OF EQUIPMENT LEASE AGREEMENT

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

Section 3.2 Reserved.

Section 3.3 Subordination of Equipment Lease Agreement.

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

ARTICLE IV
ACQUISITION AND INSTALLATION OF EQUIPMENT;
GRANT OF THE MORTGAGE; SALES TAX EXEMPTION

Section 4.1 Acquisition and Installation of the Equipment.

(a) The Sublessees shall, on or before June 30, 2016, at the Sublessees' sole cost, expense and effort, on behalf of and for the benefit of the Agency, but without reimbursement from the Agency, promptly, diligently and expeditiously acquire and install at the Company Facility, in accordance with the Application, and pay all costs and expenses for, the Equipment in accordance with this Equipment Lease Agreement.

(b) The Sublessees, with the approval of the Agency and the Bank, may revise the Equipment to be initially acquired and installed under this Equipment Lease Agreement from time to time.

(c) The Sublessees shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to all Equipment 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 Sublessees its true and lawful agent, and the Sublessees hereby accept such agency, to (i) acquire and install the Equipment in accordance with this Equipment Lease Agreement, on behalf of the Agency (but at sole cost and expense of the Sublessees), (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to the provisions of this Equipment Lease Agreement, including Section 4.5 hereof), and in general doing all things which may be requisite or proper, all for the purposes of acquiring and installing the Equipment with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf, (iii) pay all fees, costs and expenses incurred in the acquisition and installation of the Equipment from funds made available by the Sublessees (but not by the Agency), in accordance with this Equipment Lease Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable the Agency under the terms of any contract, order, receipt, or writing in connection with the acquisition and installation of the Equipment and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtaining in connection with the Equipment. This agency appointment expressly excludes the Sublessees from purchasing or leasing motor vehicles, including cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles, for use on public highways or streets. Without limiting the generality of the Sublessees' obligations under any Sublessee Documents, the Sublessees shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents (other than the Company and the Sublessees), anyone under the direction and control of any of them and anyone for whose acts or omissions the Agency or any of them may be liable, from and against any and all claims, demands, actions, suits, litigation, proceedings, damages, losses, liabilities, obligations, penalties, fines, defenses, judgments, costs, disbursements or expenses (including reasonable attorneys' and experts' fees, expenses and disbursements, and attorneys fees incurred to enforce the terms, conditions and provisions of this agreement) of whatever kind or nature arising, directly or indirectly, out of, any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility.

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

(f) The Sublessees shall obtain or cause to be obtained, and pay for, all necessary approvals, permits, certificates, authorizations and licenses from appropriate authorities, authorizing the acquisition, installation, operation and use of the Equipment for the purposes contemplated by this Equipment Lease Agreement, and shall furnish copies of same to the

Agency promptly upon receipt thereof, including satisfactory proof of payment therefor, all of which will be done in compliance in all respects with all applicable laws, and with the conditions and requirements of all policies of insurance required to be maintained hereunder and under this Equipment Lease Agreement with respect to the Equipment.

(g) The Sublessees, as agent for the Agency, shall comply with all provisions of the Labor Laws applicable to the acquisition or installation of the Equipment. The Sublessees shall include in all contracts all provisions which may be required to be inserted therein by the Labor Laws applicable to the acquisition or installation of the Equipment. The provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Equipment Lease Agreement.

Section 4.2 Grant of Mortgage and Other Security. So as to provide funds for payment of costs and expenses of acquiring and installing the Equipment, together with other payments and incidental expenses in connection therewith, at the request of any Sublessee, the Agency may grant from time to time to the Bank a mortgage lien or mortgage liens and security interest or interests, in form and substance satisfactory to the Agency, on or in the Facility or a part thereof in favor of the Bank as security for the obligations of the Company or any Sublessee, including the Note, arising out of the acquisition and installation of the Equipment by any Sublessee, provided that such mortgage or mortgages and other security devices shall be without recourse to the Agency, its members, directors, officers, employees and agents who shall have no personal liability thereunder, nor in their capacity as officers, directors, members, employees and agents and shall otherwise be upon such terms, conditions and provisions as shall be acceptable to the Agency. The Sublessees, throughout the term of this Equipment Lease Agreement, shall, at their sole cost and expense, promptly comply with the Mortgage and, without limiting the generality of the Sublessees' obligations under this Equipment Lease Agreement, defend, indemnify and hold harmless the Agency, and its members, officers, agents (other than the Company or the Sublessees, or any person appointed by the Agency as the Agency's agent under this Equipment Lease Agreement) and employees from and against any claim, action, damage, liability or expense, including attorneys' fees, arising in connection with, or resulting from any failure of any Sublessee to promptly comply with the Mortgage. Nothing herein contained shall be construed (i) to condition any of the Sublessees' obligations under this Equipment Lease Agreement upon obtaining financing for the Equipment or any part thereof, (ii) to constitute a representation by the Agency that financing for the Equipment is or shall become available, or (iii) to obligate the Agency to provide any funds for the Equipment or reimburse any Sublessee or any other person for any costs or expenses of the Equipment whether or not the proceeds of any financing are sufficient.

Section 4.3 Certificates of Completion. The Sublessees shall furnish the Agency with evidence of completion of the acquisition and installation of the Equipment, including (i) a certificate signed by an Authorized Representative stating that acquisition and installation of the Equipment has been completed in accordance with this Equipment Lease Agreement, and stating that the payment of all labor, services, materials and supplies used in such acquisition, and installation has been made or provided for; (ii) such certificates, permits and licenses required for the Equipment as may be satisfactory to the Agency and the Bank; and (iii) such documents or certificates as may be required by the Agency or the Bank.

Section 4.4 Remedies to be Pursued Against Contractors and Subcontractors and Their Sureties. In the event of a default by any contractor or other Person or subcontractor under any contract made by it in connection with the Equipment or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Sublessees at their expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other Person so in default and against such surety for the performance of such contract. The Sublessees, in their own names or, if necessary, in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other Person which the Sublessees deem reasonably necessary, and in such event the Agency, at the Sublessees' expense, shall cooperate fully with the Sublessees and take all action necessary to effect the substitution of the Sublessees for the Agency in any such action or proceeding provided that the Agency, its members, officers, directors, employees and agents shall not thereby be subjected to risk of loss, liability or expense.

Section 4.5 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 Sublessee, any Agent or any third party that any Sales Tax Exemption is available under this Equipment Lease Agreement.

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

(i) This Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) June 30, 2016, (B) completion of the initial acquisition and installation of the Equipment, (C) the Maximum Sublessee Sales Tax Savings Amount has been received or realized on account of the Equipment, (D) the expiration or termination of this Equipment Lease Agreement, (E) notice from the Agency to any Sublessee of termination of the Sales Tax Exemption, and (F) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 (the date on which any of the foregoing occurs may be referred to herein as the "Equipment Termination Date").

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to any Sublessee that any Sublessee is in default under this Equipment 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 Equipment Lease Agreement.

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

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

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

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

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

(ix) Sublessees agree that the aggregate amount of the Equipment Sales Tax Savings realized by the Sublessees and by each Agent in connection with the Equipment shall not exceed in the aggregate the Maximum Sublessee Sales Tax Savings Amount.

(c) Procedures for Appointing Agents. If any Sublessee desires to seek the appointment of the Company, 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 Equipment 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 Sublessees must complete and submit Form ST-60 to the Agency with an original copy of the completed Sales Tax Agent Authorization Letter in the form attached hereto as Schedule D executed by the Agent. [At the date hereof, Form ST-60 may be obtained via the internet by

typing http://www.tax.ny.gov/pdf/current_forms/st/st60_fill_in.pdf into the address bar of an internet browser and saving the "fill-in" PDF of the form].

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Schedule D, 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 Sublessees within five (5) business days following such execution. The Sublessees shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Equipment Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Sublessee.

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

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

(e) Form ST-123 Requirement. As an agent of the Agency, each Sublessee 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 Sublessees or by any Agent, as agent for the Agency, for the construction, renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Sublessees, as Project operator of the Agency, was the purchaser. The Sublessees shall retain copies of all such contracts, agreements, invoices, bill and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the

“Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

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

(g) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Sublessees shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Schedule E, which accounts for all of the Sublessee Sales Tax Savings realized by the Sublessees and each Agent during the prior annual period ending on the preceding December 31st (or such shorter period beginning on the Closing Date and ending on the preceding December 31st), unless the Equipment Termination Date occurred prior to such December 31st. Within ten (10) days after the Equipment Termination Date, the Sublessees shall file with the Agency a completed Sales Tax Registry which accounts for all Sublessee Sales Tax Savings realized by the Sublessees and each Agent during the period from the preceding December 31st to the Equipment Termination Date.

(h) Special Provisions Relating to Sales Tax Savings.

(i) The Sublessees covenant and agree to comply, and to cause each of their respective 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 Equipment Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Sublessees acknowledge and agree that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Sublessee Sales Tax Savings taken or purported to be taken by the Sublessees, any Agent or any other person or entity acting on behalf of any Sublessee to which Sublessees, or any of them, is not entitled or which are in excess of the Maximum Sublessee Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where any Sublessee, any Agent or any other person or entity acting on behalf of a Sublessee failed to comply with a material term or condition to use property or services in the manner required by this Equipment Lease Agreement. The Sublessees shall, and shall require each Agent and any other person or entity acting on behalf of any Sublessee, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and

determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(i) Subject to the provisions of Section 4.5(h) hereof, in the event that any Sublessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Equipment Lease Agreement or any Sales Tax Agent Authorization Letter, the Sublessees shall promptly deliver notice of same to the Agency, and the Sublessees 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 any Sublessee or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to any Sublessee, the Sublessees shall make available at reasonable times to the Agency and/or an independent certified public accountant or firm of independent certified public accountants selected by the Sublessees and approved by the Agency (or if the Sublessees shall fail to promptly select such accountant or accountants or receive the Agency's approval thereof, then such accountant or accountants may be selected by the Agency) all such books, records, contracts, agreements, invoices, bills or purchase orders of the Sublessees and any Agent, and require all appropriate officers and employees of the Sublessees to respond to all inquiries by the Agency and/or such independent certified public accountant or firm of independent certified public accountants, as shall the Agency, or accountant or accountants, consider necessary (y) to indicate in reasonable detail those costs for which any Sublessee 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 Sublessees under this Section 4.5.

ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of the Equipment. The Agency hereby leases the Equipment to the Sublessees and the Sublessees hereby hires and takes the Equipment from the Agency upon the terms and conditions of this Equipment Lease Agreement.

Section 5.2 Use of Facility. The Sublessees shall use the Equipment for milk and food distribution at the Company Facility and not for any other purpose or location without the approval of the Agency.

Section 5.3 Duration of Lease Term; Quiet Enjoyment.

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

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on June 30, 2016 (the "Equipment Expiration Date"), or on such earlier date as may be permitted by Section 11.1 hereof, provided, however, that the Agency

reserves the right not to terminate this Equipment Lease Agreement until all charges, fees and expenses of the Agency required to be paid under any of the Sublessee Documents shall have been paid in full.

(c) The Agency, subject to the provisions of Section 4.2, shall not take any action, other than pursuant to Article X of this Equipment Lease Agreement, to prevent the Sublessees during the Equipment Lease Term from having quiet and peaceable possession and enjoyment of the Equipment and, at the request of the Sublessees and at the Sublessees' sole cost and expense, shall cooperate with the Sublessees in order that the Sublessees may have quiet and peaceable possession and enjoyment of the Equipment as hereinabove provided. The rights of the Sublessees hereunder and this Equipment Lease Agreement shall be subordinate to the Lien of the Mortgage.

Section 5.4 Rents and Other Amounts Payable.

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

(b) The Sublessees, under the provisions of subsection 5.4(a) above, shall make the above-mentioned payments (and all other payments required hereunder), without set-off or deduction, in immediately available funds and without any further notice in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Sublessees shall fail to timely make any payment required in this Section 5.4, the Sublessees shall pay the same together with all additional interest or late payment penalties at the maximum rate of interest and amount permitted by law. The receipt by the Agency of any rent with knowledge of the breach of any covenant of this Equipment Lease Agreement shall not be deemed a waiver of such breach and no provision of this Equipment Lease Agreement shall be deemed to have been waived by the Agency unless such waiver shall be in writing signed by the Agency. No payment of the Sublessees or receipt by the Agency of a lesser amount than the rent due shall be deemed to be other than on account of the earliest rent due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Agency may accept such check or payment without prejudice to the Agency's right to recover the balance of such rent or pursue any other remedy provided in this Equipment Lease Agreement. All checks tendered to the Agency as and for the rent hereunder shall be deemed payments for the account of the Sublessees. The acceptance by the Agency of rent from anyone other than the Sublessees shall not be deemed to operate as an attornment to the Agency by the payor of such rent or as a consent by the Agency to an assignment or subletting by any Sublessee

of the Equipment or a portion thereof to such payor, or as a modification of the provisions of this Equipment Lease Agreement.

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

(d) This Equipment Lease Agreement, including the rent herein specified, shall be absolutely net to the Agency, and all costs, expenses and obligations of every kind relating to or arising in connection with the Equipment, including the Mortgage and the acquisition, installation, renovation, improvement, maintenance, operation, repair, replacement and lease of the Equipment, which may arise or become due during the Equipment Lease Term shall be paid by the Sublessees. Without limiting the generality of the Sublessees' obligations under this Equipment Lease Agreement, the Sublessees shall defend, indemnify and hold the Agency and the Bank harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out any and all of the foregoing.

Section 5.5 Obligations of Sublessees Hereunder Unconditional. The obligations of the Sublessees to make the payments required in Section 5.4 hereof, and to perform and observe any and all of the other covenants and agreements on the part of any of them contained herein shall be a general obligation of the Sublessees 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 Sublessees shall not (i) suspend, discontinue or abate any payment required hereof, (ii) fail to observe any of its other covenants or agreements in this Equipment Lease Agreement, (iii) except as provided in Sections 11.1 or 11.2 hereof, terminate this Equipment Lease Agreement for any cause whatsoever including without limiting the generality of the foregoing, the failure to complete the acquisition or installation of the Equipment, failure of the Sublessees to use the Equipment as contemplated in this Equipment Lease Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of the Equipment or in the suitability of the Equipment for the Sublessees' purposes, or needs, failure of consideration, destruction of or damage to the Equipment, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Equipment, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or a duty, liability or obligation arising out of or in connection with this Equipment Lease Agreement.

Section 5.6 Rights and Obligations of the Sublessees upon Prepayment of Obligations to the Bank. In the event all Indebtedness due the Bank and secured by the Mortgage, and all fees and expenses of the Agency and the Bank, required to be paid thereunder or hereunder shall be paid in full prior to the termination date specified in Section 5.3 hereof, and instruments evidencing such satisfaction of the obligations to the Bank shall have been duly recorded and/or filed to the satisfaction of the Agency, and provided no event has occurred or is continuing

which either immediately or with the lapse of time or with notice, or both, shall constitute an Event of Default under this Equipment Lease Agreement, (i) all references in this Equipment Lease Agreement to the Bank, the Note, Indebtedness due the Bank and the Mortgage shall be ineffective and (ii) the Sublessees shall be entitled, at their option, to the exclusive use and enjoyment of the Equipment from the date of such payment until the Equipment Expiration Date, on all of the terms and conditions hereof, except that the Sublessees shall not be required to carry any insurance for the benefit of the Bank. The Sublessees, at their sole cost and expense, shall obtain and record or file appropriate discharges or releases of the Mortgage and any other security interests relating to the Equipment or this Equipment Lease Agreement to the satisfaction of the Agency.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by Sublessees.

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

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

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

(d) All improvements, additions, alterations, repairs, replacements, and restorations (i) shall not impair the continuity of the use and operation of the Equipment as contemplated hereby for longer than reasonably necessary, (ii) shall be effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) shall be

promptly and fully paid for by the Sublessees, and (v) shall not change the nature of the Equipment so that it would not constitute a commercial facility and a qualified "project" as defined in and as contemplated by the Act for use for the general purposes specified in this Equipment Lease Agreement.

(e) The Sublessees, at their own cost and expense, shall promptly execute and comply with all present and future valid statutes, orders, ordinances, regulations and requirements and rules of the federal, state, county, municipal and other local governments, if any, and all their departments and bureaus, and of the New York Board of Fire Underwriters or any other similar body having jurisdiction over the Equipment, whether usual or unusual, ordinary or extraordinary, and whether or not related to (i) changes or requirements, (ii) to the use made of the Equipment, (iii) any unlawful use, negligence of any Sublessee, or (iv) any breach or default of any Sublessee under this Equipment Lease Agreement.

Section 6.2 Reserved.

Section 6.3 Reserved.

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

(a) Insurance against physical loss or damage to the Equipment as provided under a standard "all risk" property policy, in amounts not less than the actual replacement cost of the Equipment, as determined by a recognized appraiser or insurer selected by the Sublessees and approved by the Agency.

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

(c) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency, any Sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of any Sublessee;

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be in form and substance satisfactory to the Agency, and procured and maintained with financially sound and generally recognized responsible insurance companies selected by the Sublessees and approved by the Agency and authorized to write such insurance in the State; the company issuing the policies required by Section 6.4 (a) and (b) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance shall be written with such deductibles amounts as shall be acceptable to the Agency. All policies evidencing such insurance shall provide for payment of the losses to the Sublessees and the Agency as its interest may appear, and at least thirty (30) days' written notice of the cancellation or modification thereof to the Agency. The policies required by Section 6.4 (a) hereof shall contain loss and payee clauses in the name of the Bank until payment in full of the Indebtedness secured by the Mortgage, requiring that all Net Proceeds of insurance resulting from any claim for loss or damage covered thereby be paid to the Bank, for the benefit of the Bank. The Sublessees acknowledge that a mortgage and security interest in the policies of insurance required by Section 6.4 (a) and the Net Proceeds thereof have been or may be granted by the Agency to the Bank and the Sublessees consent thereto. The policies maintained hereunder shall contain appropriate waivers of subrogation, and shall provide that such coverages shall be primary, irrespective of any other insurance that may be maintained by the Sublessees, the Agency or otherwise, and shall be specific to the Equipment, and no other locations. Each of the policies required by Section 6.4 shall name the Agency as an additional insured.

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

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

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) 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) and (c)

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

Section 6.7 Right of Agency to Pay Insurance Premiums and Other Charges. If the Sublessees fail (i) to maintain insurance required to be maintained by Sections 6.4 and 6.5 hereof, or (ii) to pay any amount required to be paid by any law or ordinance relating to the use of the Equipment or by any requirement, order or notice of violation thereof issued by any governmental person, (iii) to pay any Lien which is recorded or filed against the Equipment or any part thereof (unless contested in accordance with the provisions of Section 8.9(b)), or (iv) to pay any other amount or perform any act hereunder required to be paid or performed by the Sublessees hereunder, the Agency may pay such premium for such insurance, or perform such act. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed after notice of intention to make such payment shall have been given by the Agency to the Sublessees. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Sublessees. The Sublessees shall reimburse the Agency on demand for any amount so paid, and expense incurred by the Agency pursuant to this Section 6.7, together with interest and late charges thereon from the date of payment at the maximum rates permitted by law.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction.

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

(b) If no Event of Default shall have occurred and the Sublessees shall exercise their option to terminate this Equipment Lease Agreement pursuant to Section 11.1 hereof, the

Sublessees shall not be obligated to replace, repair, rebuild or restore the Equipment, the Net Proceeds derived from such insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Sublessees. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Sections 10.2, 10.4 and 10.5 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Sublessees.

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

(d) All such repair, replacement, rebuilding, restoration or relocation of the Equipment 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 Sublessees in accordance with the terms of the applicable contracts, and shall automatically become a part of the Equipment as if the same were specifically described herein. Subject to the terms of the Mortgage, any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Sublessees.

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

Section 7.2 Reserved.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by the Agency. THE AGENCY HAS NOT MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE EQUIPMENT, 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 SUBLESSEES OR THE EXTENT TO SUCH FUNDS AVAILABLE TO THE SUBLESSEES WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE ACQUISITION AND INSTALLATION OF THE EQUIPMENT. THE SUBLESSEES ACKNOWLEDGE THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE SUBLESSEES, ON BEHALF OF THEMSELVES ARE SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR PURPOSES OF THE SUBLESSEES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE SUBLESSEES OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF

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

Section 8.2 Hold Harmless Provisions.

(a) The Sublessees hereby release the Agency from, agrees that the Agency shall not be liable for, and agrees to defend, indemnify and hold the Agency 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 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 (ii) liability arising from or expense incurred by the Agency's financing, acquisition, construction, renovation, equipping, operating, leasing, or subleasing of the Facility, including without limiting the generality of the foregoing, all claims, loss or damage arising under, in connection with, or related to, any breach of any of the Sublessee Documents, or any other instruments relating to any of them, all claims arising from the exercise by the Sublessees of the authority conferred upon it pursuant to Section 4.1(d) of this Equipment Lease Agreement, and all causes of action and reasonable attorneys' fees and any other reasonable expenses incurred in prosecuting or defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall not be construed as a limitation of any other indemnification provided herein and shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its officers, members, 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 Equipment Lease Agreement, the obligations of the Sublessees pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Equipment Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its officers, members, agents and employees, relating to the enforcement of the provisions herein specified.

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

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

Section 8.3 Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right to enter upon and at all times to inspect the Facility.

Section 8.4 Company and Sublessees to Maintain Existence; Conditions Under Which Exceptions Permitted. The Sublessees shall, and shall cause the Company to, during the Equipment Lease Term, maintain their respective existences, and not dissolve or otherwise dispose of all or any substantial part of their respective assets.

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

Section 8.6 Agreement to Provide Information. The Sublessees shall, and shall cause the Company to (a) within thirty (30) days after the end of each calendar year of the Equipment Lease Term, provide to the Agency, and certify to the accuracy of, the Company's and the Sublessees' respective New York State Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (currently, Form NYS-45), including the attachments thereto (the Company and the Sublessees shall redact employees' social security numbers), for the fourth quarter of such calendar year (if such form shall be superceded or cease to be used, the Agency may designate another form or other method by which to obtain such information reported thereon), together with a detailed analysis satisfactory to the Agency of the full time equivalency employment, and (b) whenever requested by the Agency, provide and certify or cause to be provided and certified, within thirty (30) days after request, such information concerning the Company, the Sublessees, their respective finances, the Facility and other topics necessary in the judgment of the Agency to enable the Agency to make any report required by law (including the Act, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Controller), governmental regulation, the Company Documents, the Sublessee Documents, or otherwise, or requested for any other reason desired by the Agency for its business purposes. Without limiting the foregoing, the Sublessees shall, and shall cause the Company to, file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law and shall provide to the Agency such information as the Agency may require to enable, in the Agency's sole discretion, to comply with applicable law, including Section 874(9) of the New York State General Municipal Law; the Sublessees shall, and shall cause the Company to, submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance; and the Sublessees shall, and shall cause the Company to, provide to the Agency within ten (10) days after request therefore, true, accurate and complete copies of such reports and returns filed by the Company or any Sublessee, certified by the chief executive officer of the Company or the Sublessees, as appropriate, to be true, accurate and complete, as the Agency may request from time to time.

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

Section 8.8 Compliance With Order, Ordinances, Etc.

(a) The Sublessees, throughout the Equipment Lease Term, shall, at their sole cost and expense, promptly comply with, and shall cause all contractor, sub-contractor and sublessees to comply with, the provisions of Exhibit C hereto, and all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Equipment or any part thereof, or to the acquisition or installation, thereof, or to any use, manner of use or condition of the Equipment or any part thereof and, without limiting the generality of the Sublessees' obligations under this Equipment Lease Agreement, shall defend, indemnify and hold the Agency and its officers, members, directors, agents and employees harmless from any liability or expenses resulting from any failure by any Sublessee to so comply.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Sublessees may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) other than the provision of Exhibit C. In such event, the Sublessees 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 any Sublessee that by failure to comply with such requirement or requirement, the Facility or any part thereof may be materially endangered or subject to loss or forfeiture, in which event the Sublessees shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency.

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

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Sublessees, throughout the Equipment Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the

Equipment, and shall defend, indemnify and hold harmless the Agency, its members, officers, directors, agents and employees, from any liability or expenses resulting from any failure by any Sublessee to comply with the terms of this subsection (a).

(b) Notwithstanding the provisions of subsection (a) of this Section 8.9, the Sublessees may in good faith contest any such Lien. In such event, the Sublessees 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 any Sublessee that by nonpayment of any such item or items, the Lien of the Mortgage may be materially endangered or the Equipment or any part thereof may be subject to loss or forfeiture, in which event the Sublessees shall promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing the Lien to be removed or by taking such other actions as may be satisfactory to the Agency to protect its interests; provided, however, any Lien shall be removed within thirty (30) days of the filing thereof to the satisfaction of the Agency.

Section 8.10 Identification of Equipment. All Equipment which is or may become the property of the Agency pursuant to the provisions of this Equipment Lease Agreement shall be properly identified by the Sublessees by such appropriate records, including computerized records, as may be approved by the Agency.

Section 8.11 Depreciation Deductions. The Sublessees shall be entitled to all depreciation deductions with respect to any depreciable property and investment tax credits with respect to the Equipment pursuant to the Code.

Section 8.12 Employment Opportunities, Notice of Jobs. The Sublessees shall, and will cause the Company and all sublessees to, except as otherwise provided by collective bargaining contracts or agreements to which it, the Company or a sublessee is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Sublessees shall, and shall cause the Company and each sublessee, if any, to, except as otherwise provided by collective bargaining contracts or agreements to which it, the Company or a sublessee is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 8.13 Employment Commitments. The Sublessees shall cause the Sublessees and the Company collectively to achieve employment levels of at least forty three (43) Full Time Equivalent Employees as of June 30, 2016, and forty six (46) Full Time Equivalent Employees as of June 30, 2017, and shall thereafter maintain at least forty six (46) Full Time Equivalent Employees at all times during the Lease Term.

Section 8.14 Section 875 Compliance. The provisions of Section 875 of the General Municipal Law of the State of New York are hereby incorporated in, and made a part hereof, and the Sublessees shall comply, and shall cause the Company, and all other agents, project operators and other persons and entities to comply, and to undertake in writing satisfactory to the Agency

to comply, with the provisions of such law, and all regulations and directives promulgated thereunder.

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

Section 9.1 Reserved.

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

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

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

Section 9.3 Assignment and Subleasing.

(a) This Equipment Lease Agreement shall not be assigned, in whole or in part, without the written consent of the Agency, and the Equipment shall not be subleased (including successive generation subleases) nor used by any person other than the Sublessees, in whole or in part, without the written consent of the Agency. Any assignment or sublease shall be on the following conditions:

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

(2) The assignee shall assume the obligations of the Sublessees hereunder to the extent of the interest assigned;

(3) The Sublessees shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or

sublease, as the case may be, and the instrument of assumption, in form and substance satisfactory to the Agency;

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

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

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

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

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

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

(c) If any Sublessee's interest in this Equipment Lease Agreement is assigned, whether or not in violation of the provisions of this paragraph, the Agency may collect rent from the assignee. If the Equipment or any part thereof are sublet to, or used by any person other than the Company or the Sublessees, whether or not in violation of this paragraph, the Agency, after default by any Sublessee under this Equipment Lease Agreement, may collect rent from the subtenant or user. In either case, the Agency shall apply the net amount collected to the rent

reserved in this Equipment Lease Agreement, but no such assignment, subletting, or use, whether with or without the Agency's prior consent, nor any such collection or application of rent, shall be deemed a waiver of any term, covenant or condition of this Equipment Lease Agreement or be deemed the acceptance by the Agency of such assignee or subtenant or be deemed acceptance by the Agency of such subletting, occupancy or use and same shall not relieve the Sublessees from their obligation to obtain the express prior consent of the Agency to any further assignment, subletting or use. Neither any assignment of any Sublessee's interest in this Equipment Lease Agreement nor any subletting or use of the Equipment or any part thereof by any person other than a Sublessee, nor any collection of rent by the Agency from any person other than a Sublessee as provided in this subsection, nor any application of any such rent as provided in this subsection (b) shall, in any circumstances, relieve the Sublessees of their obligation to fully observe and perform the terms, covenants and conditions of this Equipment Lease Agreement on any Sublessee's part to be observed and performed.

Section 9.4 Merger of Agency.

(a) Nothing contained in this Equipment Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title of the Equipment as an entirety to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Equipment, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Equipment Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the political subdivision or public benefit corporation resulting from such consolidation of surviving such merger or to which the Equipment 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 Sublessees and the Bank. The Agency shall promptly furnish such additional information with respect to any such transaction as the above mentioned Persons reasonably may request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

(1) The failure by the Sublessees to pay or cause to be paid when due, the amounts specified to be paid pursuant to Section 5.4(a) hereof; or

(2) The failure by any Sublessee to observe and perform any covenant contained in Sections 2.2(i), 2.2(j), 2.2(l), 4.5, 6.3, 6.4, 6.5, 8.2, 8.4, 8.6, 8.8, 8.13, 8.14, 9.3, 10.4, 10.5 or 10.6 hereof; or

(3) Any representation or warranty of any Sublessee herein or in any certificate, application, statement or report furnished in connection herewith is false or misleading in any material respect; or

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

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

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

(7) The occurrence of a Recapture Event under the Recapture Agreement; or

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

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

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Section 4.1 or Section 6.1(b) of this Equipment Lease Agreement (other than the Sublessees' indemnification obligations thereunder) and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Bank, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Equipment Lease

Agreement of the party giving such notice, so far as they are affected by such force majeure shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 10.1. The term "force majeure" as used herein shall include, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. The settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

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

(1) Declare, by written notice to the Sublessees, all unpaid rent, fees and other charges payable under this Equipment Lease Agreement, including unpaid and past due payments under the PILOT Agreement and all amounts due and owing under the Recapture Agreement, to be immediately due and payable, whereupon the same shall become immediately due and payable; provided, however, that if an Event of Default specified in Section 10.1(a)(4) hereof shall have occurred, such unpaid rent, fees and other charges due under this Equipment Lease Agreement shall become immediately due and payable without notice to any Sublessee or the taking of any other action by the Agency;

(2) Terminate this Equipment Lease Agreement, convey the Equipment to the Sublessees and terminate the PILOT Agreement and the Sales Tax Exemption Authorization. The Agency shall have the right to execute lease termination and conveyance documents with respect to the Equipment as considered necessary or appropriate by the Agency; upon request of the Agency, the Sublessees shall execute, acknowledge and deliver to the Agency such additional or confirming instruments, in form and substance satisfactory to the Agency, to further evidence the Agency's appointment hereunder as the Agency may request from time to time;

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due to the Agency, whether or not under this Equipment Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Agency Compliance and Guaranty Agreement, or otherwise, and to enforce the obligations, agreements or covenants of the Sublessees under this Equipment Lease Agreement, the PILOT

Agreement, the Recapture Agreement, or the Agency Compliance and Guaranty Agreement, or otherwise.

(b) No action taken pursuant to this Section 10.2 (including termination of this Equipment Lease Agreement) shall relieve any Sublessee from its obligation to make all payments required by Section 5.4 hereof or under the PILOT Agreement, the Recapture Agreement, or the Agency Compliance and Guaranty Agreement.

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

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

Section 10.5 Agency's Right to Perform and Expenses. If any Sublessee shall default in the observance or performance of any term or covenant on the Sublessee's part to be observed or performed under or by virtue of any of the terms or provisions, this Equipment Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Sublessee Documents, the Agency may immediately or at any time thereafter, with or without notice, perform the same for the account of the Sublessees. All expenditures and obligations incurred by Agency for the payment of money in connection with, arising from or incidental to the Sublessee's default, including Agency's performance of the Sublessee's obligations under this Equipment Lease Agreement, the Agency Compliance and Guaranty Agreement, or any other Sublessee Document, or in connection with, arising from or incidental to the filing by or against any Sublessee or any guarantor of this Equipment Lease Agreement of a petition in bankruptcy, such sums paid or obligations incurred, including attorneys' fees, whether or not in instituting, prosecuting or defending any action or proceeding, together with interest thereon at the maximum rate permitted by law, shall be deemed to be additional rent hereunder and shall be paid by the Sublessees to Agency within ten (10) days of demand.

Section 10.6 Certificate of No Default. Each Sublessee shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Sublessee stating that the Sublessee is not in default under this Equipment Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Agency Compliance and Guaranty

Agreement, or any other Sublessee Document, including the Loan Documents, and that no Event of Default exists under this Equipment Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Agency Compliance and Guaranty Agreement, or any other Sublessee Document, including any of the Loan Documents.

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

Section 10.8 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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

Section 11.1 Early Termination of the Equipment Lease Agreement.

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

(i) The Equipment shall have been damaged or destroyed to such extent that, in the opinion of an Authorized Representative of the Sublessees and of an Independent Engineer (in each case expressed in a certificate filed with the Agency within sixty (60) days after such damage or destruction), (a) the Equipment cannot reasonably be restored within a period of six (6) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, (b) the Sublessees are thereby prevented from carrying on its normal operations within the Facility for a period of six (6) consecutive months after such damage or destruction or (c) the cost of restoration of the Equipment would exceed the Net Proceeds of insurance carried thereon, plus the amount for which the Sublessees are self insured as the result of permitted deductible amounts under Sections 6.4 and 6.5 of this Equipment Lease Agreement; or

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

intent and purposes of the parties or imposes material additional burdens or liabilities on the Sublessees.

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

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

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

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

(c) all amounts due and unpaid under the Recapture Agreement;

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

(e) an amount deemed sufficient by the Agency to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Sublessee Documents.

Section 11.3 Conveyance on Purchase. At the closing of any termination of this Equipment Lease Agreement and conveyance of the Equipment pursuant to this Article XI, at the sole cost and expense of the Sublessees, the Agency shall, upon receipt of the purchase price, and such other fees, charges and other amounts as shall be due the Agency, and the Sublessee shall, execute and deliver such documents satisfactory to the Agency to terminate this Equipment Lease Agreement and to convey the Equipment to the Sublessees, subject only to the following: (i) any Liens to which title to such Equipment was subject when conveyed to the Agency, (ii) any Liens created at the request of any Sublessee, to the creation of which any Sublessee consented or in the creation of which any Sublessee acquiesced, (iii) any Permitted Encumbrances, and (iv) any Liens resulting from the failure of any Sublessee to perform or observe any of the agreements on its part contained in this Equipment Lease Agreement or arising out of an Event of Default, and (b) to release and convey to the Sublessees all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance (excluding, however, any rights of indemnification or defense thereunder) with respect to the Equipment.

Section 11.4 Closing. The Closing of the transactions contemplated under this Article XI shall take place at the office of the Agency or such other place as the Agency may specify, on such date and at such time as the Agency shall direct, by notice to that effect, provided that the

Agency shall endeavor to fix the place, date and time of closing hereunder so as to occur not less than ten (10) days nor more than forty five (45) days after the occurrence of the event giving rise thereto.

ARTICLE XII
MISCELLANEOUS

Section 12.1 No Liability.

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

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

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

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

To the Sublessee:

Crestwood Farms, Inc.
Crestwood Distribution LLC
North Shore Dairy, Inc.
Whey Home Inc.
Great American Dairy Inc.
Long Island Farms Inc.
32 Sawgrass Drive
Bellport, NY 11713
Attn: Mr. Michael Wieczorek

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

Section 12.3 Binding Effect. This Equipment Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. The obligations under this Equipment Lease Agreement of each of the Sublessees shall be joint and several, shall be absolute and unconditional, shall remain in full force and effect, and shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event whether or not with notice to or the consent of any Sublessee.

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

Section 12.5 Amendments, Changes and Modifications. This Equipment Lease Agreement may not be amended, changed, modified, altered or terminated except in writing and in accordance with the provisions of this Equipment Lease Agreement. Any waiver of the provisions hereof shall be in writing and executed by each party hereto.

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

Section 12.7 Applicable Law. This Equipment Lease Agreement shall be governed exclusively by the applicable laws of the State. Any actions, suits or proceedings arising under or by virtue of this Equipment Lease Agreement shall be commenced, prosecuted or maintained by any Sublessee solely in the State of New York, County of Suffolk and each Sublessee consents to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Equipment Lease Agreement.

Section 12.8 Recording and Filing.

(a) Upon the Equipment Completion Date with respect to the Equipment and upon the installation of all of the Equipment therein, the Sublessees shall prepare a schedule listing all

of the Equipment not previously described in this Equipment Lease Agreement. If requested by the Agency, the Sublessees 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.

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

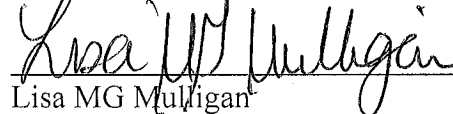
Section 12.9 Survival of Obligations. The obligations of the Sublessees to or for the benefit of the Agency shall survive any termination or expiration of this Equipment Lease Agreement.

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

IN WITNESS WHEREOF, the Agency and the Sublessees have each caused this Equipment Lease Agreement to be executed in their respective names by a duly authorized individual, all as of June 1, 2015.

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By:



Lisa MG Mulligan
Its Chief Executive Officer

CRESTWOOD FARMS, INC.

By:



Name: Michael Wieczorek
Title: President

CRESTWOOD DISTRIBUTION LLC

By:



Name: Michael Wieczorek
Title: Sole Member

NORTH SHORE DAIRY, INC.

By:



Name: Michael Wieczorek
Title: President

WHEY HOME INC.

By: Michael Wiczorek
Name: Michael Wiczorek
Title: President

GREAT AMERICAN DAIRY INC.


By: Michael Wiczorek
Name: Michael Wiczorek
Title: President

LONG ISLAND FARMS INC.


By: Michael Wiczorek
Name: Michael Wiczorek
Title: President

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

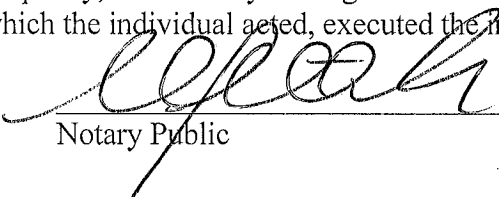
On the 18th day of June in the year 2015, before me, the undersigned, personally appeared LISA MG MULLIGAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public 

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

MICHAEL P. LICITRA
Notary Public, State of New York
No. 01LI4899145
Qualified in Nassau County
Commission Expires June 22, 2019 

On the 18th day of June in the year 2015, before me, the undersigned, personally appeared MICHAEL WIECZOREK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public 


MATTHEW C. LAMSTEIN
Notary Public, State of New York
No. 02LA6133967
Qualified in Nassau County
Commission Expires July 25, 2017 

EXHIBIT A

RESERVED

EXHIBIT B

EQUIPMENT

All Eligible Items acquired and installed and/or to be acquired and installed by Crestwood Farms, Inc., Crestwood Distribution LLC, North Shore Dairy, Inc., Whey Home Inc., Great American Dairy Inc., and Long Island Farms Inc. (collectively, the "Sublessee") in connection with the Town of Brookhaven Industrial Development Agency's RPMV Realty LLC / Crestwood Farms, Inc. Facility located at 32 Sawgrass Drive, Bellport, Suffolk County, New York and leased by the Town of Brookhaven Industrial Development Agency to the Sublessee pursuant to the terms of the Equipment Lease Agreement, dated as of June 1, 2015.

EXHIBIT C

COMPLIANCE WITH LABOR LAW, EXECUTIVE LAW AND CIVIL RIGHTS LAW

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

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

Now therefor, the parties to the attached Equipment Lease Agreement (the "Agreement") further agree to be bound by the following, which are hereby made a part of the Agreement.

I. The Sublessees agrees that:

(a) no laborer, workman or mechanic, in the employ of any Sublessee or any contractor, subcontractor or other person doing or contracting to 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 the emergencies set forth in the Labor Law;

(b) to the extent applicable and required by law, the Sublessees 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 Sublessees to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Sublessees acknowledge that it has been advised that it is the policy of the Agency to encourage the Sublessees to voluntarily comply with such provisions.

II. To the extent required by law, the Sublessees agree that:

(a) in the hiring of employees for the performance of work in equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the construction, renovation and equipping of the Facility, neither the Sublessees nor any contractor, subcontractor nor any person acting on behalf of the Sublessees 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 any Sublessee nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in 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 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 Sublessees 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 permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

EXHIBIT D

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: June 30, 2016

ELIGIBLE LOCATION:

[32 Sawgrass Drive, Bellport, Suffolk County, New York]

June __, 2015

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency
(RPMV Realty LLC / Crestwood Farms, Inc. Facility)

Ladies and Gentlemen:

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

1. Pursuant to a certain Equipment Lease Agreement, dated as of June 1, 2015 (the "Equipment Lease Agreement"), between the Agency and CRESTWOOD FARMS, INC., a business corporation, CRESTWOOD DISTRIBUTION LLC, a limited liability company, NORTH SHORE DAIRY, INC., a business corporation, WHEY HOME INC., a business corporation, GREAT AMERICAN DAIRY INC., a business corporation, and LONG ISLAND FARMS INC., a business corporation, each duly organized and validly existing under the laws of the State of New York and maintaining a place of business at 22 Spence Street, Bay Shore, New York 11706 (collectively, the "Sublessees", and, individually, a "Sublessee"), the Agency has authorized the Sublessees to act as its agent in connection with the Equipment described therein located at the Eligible Location described above. The words and terms as used in this Equipment Lease Agreement shall have the meanings and interpretations ascribed thereto in that certain Lease Agreement dated as of June 1, 2015, by and between the Agency, as lessor, and the RPMV REALTY LLC, as lessee, as amended from time to time unless the context or use indicates another or different meaning or intent.

2. Upon a Sublessee's request, the Agency has appointed [*insert name of Agent*] (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Schedule A hereto with respect to the scope of Sales Tax Exemption provided under the Equipment 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 Sublessee). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

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

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and indicate on the bill or invoice that the Agency or Agent or Sublessee, 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 Equipment 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 any Sublessee 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 Sublessees 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 Sublessees 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 Sublessees and the Agency the **Sales Tax Registry** attached hereto as Schedule B. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the 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 Sublessee 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 Equipment 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 any Sublessee is not entitled or which are in excess of the Maximum Sublessee Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Sublessee, any Agent or any other person or entity acting on behalf of any Sublessee 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 Equipment Lease Agreement. The Sublessees shall, and shall require each Agent and any other person or entity acting on behalf of any Sublessee, 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 any Sublessee 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 Equipment Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Sublessees and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

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

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

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

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

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

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Lisa MG Mulligan, Chief Executive Officer

ACCEPTED AND AGREED TO BY:

_____ [AGENT]

By: _____
Name: _____
Title: _____

SCHEDULE A

to

SALES TAX AGENT AUTHORIZATION LETTER

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

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

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

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

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

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

SCHEDULE 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

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:	
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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 Sublessee 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 ("TOBRIDA"), and may be disclosed by TOBRIDA in connection with the administration of the programs by TOBRIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____
Signature By: _____
Name (print): _____
Title: _____
Date: _____

EXHIBIT E

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, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []:						

TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:	
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Certification: I, the undersigned, an authorized officer or principal owner of the Sublessee, 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 Sublessee Sales Tax Savings realized by the Sublessee 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 Sublessee, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Sublessee, by the Town of Brookhaven Industrial Development Agency ("TOBRIDA"). This form and information provided pursuant hereto may be disclosed by TOBRIDA in connection with the administration of the programs by TOBRIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: _____
 Signature By: _____
 Name (print): _____
 Title: _____
 Date: _____