

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

and

SHOREHAM SOLAR COMMONS LLC

EQUIPMENT LEASE AGREEMENT

Dated as of June 1, 2016

Town of Brookhaven Industrial Development Agency
(Shoreham Solar Commons LLC 2016 Facility)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	3
ARTICLE II REPRESENTATIONS AND COVENANTS	3
Section 2.1 Representations and Covenants of Agency.....	3
Section 2.2 Representations and Covenants of Company.	3
ARTICLE III CONVEYANCE OF THE EQUIPMENT	5
Section 3.1 Agreement to Convey to Agency.....	5
Section 3.2 Public Authorities Law Representations.....	5
Section 3.3 Subordination of Equipment Lease Agreement.	5
ARTICLE IV ACQUISITION AND INSTALLATION OF THE EQUIPMENT IN THE FACILITY	5
Section 4.1 Equipping of Facility.	5
Section 4.2 Certificates of Completion.....	6
Section 4.3 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties	6
Section 4.4 Sales Tax Exemption.	7
ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS	11
Section 5.1 Demise of Equipment	11
Section 5.2 Duration of Equipment Lease Term; Quiet Enjoyment.....	11
Section 5.3 Rents and Other Amounts Payable.	12
Section 5.4 Obligations of Company Hereunder Unconditional.	12
ARTICLE VI MAINTENANCE AND INSURANCE.....	13
Section 6.1 Maintenance and Modifications of Equipment by Company.	13
Section 6.2 Installation of Additional Equipment.....	13
Section 6.3 Reserved.....	13
Section 6.4 Insurance Required.	13
Section 6.5 Additional Provisions Respecting Insurance.	14
Section 6.6 Application of Net Proceeds of Insurance.	15
ARTICLE VII DAMAGE OR DESTRUCTION OF THE EQUIPMENT	15
Section 7.1 Damage or Destruction of the Equipment.	15
ARTICLE VIII SPECIAL COVENANTS	16
Section 8.1 No Warranty of Condition or Suitability by Agency.....	16
Section 8.2 Hold Harmless Provisions.....	17
Section 8.3 Right to Inspect Equipment.	17
Section 8.4 Company to Maintain Its Existence.....	18
Section 8.5 Qualification in State.	18
Section 8.6 Agreement to File Annual Statements and Provide Information.....	18
Section 8.7 Books of Record and Accounts; Financial Statements.....	18
Section 8.8 Compliance With Orders, Ordinances, Etc.....	18
Section 8.9 Discharge of Liens and Encumbrances.....	19
Section 8.10 Depreciation Deductions and Investment Tax Credit.....	19

Section 8.11 Security Agreements19
Section 8.12 Leasing of Equipment22
Section 8.13 Reserved.....24
Section 8.14 Compliance with the Act24

ARTICLE IX RELEASE OF CERTAIN EQUIPMENT; ASSIGNMENTS AND
SUBLEASING; SECURITY INTEREST AND PLEDGE OF INTERESTS24
Section 9.1 Restriction on Sale of Equipment; Release of Certain Equipment.24
Section 9.2 Removal of Equipment.25
Section 9.3 Assignment and Subleasing.25
Section 9.4 Merger of Agency.26

ARTICLE X EVENTS OF DEFAULT AND REMEDIES26
Section 10.1 Events of Default Defined.26
Section 10.2 Remedies on Default.....28
Section 10.3 Remedies Cumulative.28
Section 10.4 Agreement to Pay Attorneys’ Fees and Expenses.29
Section 10.5 No Additional Waiver Implied by One Waiver.....29

ARTICLE XI EARLY TERMINATION OF EQUIPMENT LEASE AGREEMENT;
OPTION IN FAVOR OF COMPANY29
Section 11.1 Early Termination of Equipment Lease Agreement.29
Section 11.2 Conditions to Termination of Equipment Lease Agreement.29
Section 11.3 Obligation to Purchase Equipment.29
Section 11.4 Conveyance on Purchase.29

ARTICLE XII MISCELLANEOUS30
Section 12.1 Notices.30
Section 12.2 Binding Effect.....31
Section 12.3 Severability.31
Section 12.4 Amendments, Changes and Modifications.31
Section 12.5 Execution of Counterparts.31
Section 12.6 Applicable Law.....31
Section 12.7 Waiver of Trial By Jury.31
Section 12.8 List of Additional Equipment; Further Assurances.31
Section 12.9 Survival of Obligations.....31
Section 12.10 Table of Contents and Section Headings not Controlling.32

Exhibit A – Description of Equipment
Exhibit B – Form of Sales Tax Agent Authorization Letter
Exhibit C – Sales Tax Registry

SCHEDULE A Schedule of Definitions

THIS EQUIPMENT LEASE AGREEMENT, dated as of June 1, 2016 (this “**Equipment Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”), and SHOREHAM SOLAR COMMONS LLC, a limited liability company, organized and existing under the laws of the state of Delaware and authorized to transact business in the State of New York, having an office at 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606 (the “**Company**”).

RECITALS

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

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

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

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

WHEREAS, the Company has submitted a request for the Agency’s assistance in the acquisition, construction, renovation, and equipping of a solar electric generating facility, including (i) the acquisition of an approximately 150 acre parcel of land located at 24 Cooper Street, Shoreham, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-0200-126.00-02.00-002.000; 0200-127.00-01.00-003.000; 0200-127.00-01.00-006.00; 0200-148.00-02.00-005.000; 0200-148.00-02.00-006.000) (the “**Land**”), and the demolition of the existing residence thereon, the renovation of existing structures (including outbuildings and clubhouse) for use as offices, storage, and related uses by the Company, the construction of a solar powered electric generation facility to be 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**”), and (ii) the acquisition and installation therein of certain equipment and personal property consisting of an

approximately 24.9MW (AC) ground-mounted modules, stationary/non-tracking solar array installed on mounting racks, including approximately 125,944, 72-cell polycrystalline modules, combiner boxes, inverters, transformers, and other associated interconnect infrastructure to connect to LIPA's power grid (the "**Equipment**"; and together with the Land and the Improvements to be acquired hereafter and to be leased by the Company to the Agency pursuant to a certain Company Lease (as defined in Schedule A) and subleased by the Agency to the Company pursuant to a certain Lease Agreement (as defined in Schedule A), the "**Facility**"), which Facility is to be initially leased by the Agency to the Company; and

WHEREAS, the Agency has consented to appoint the Company as its agent for the purposes of the acquisition and installation of the Equipment, including the following as they relate to the appointment of the Company as agent of the Agency pursuant to Section 4.4 hereof with respect to the acquisition and installation of such Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of such Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition of the Equipment, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition and installation of the Equipment, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Company and Invenergy Solar LLC (the "Co-Obligor") will enter into an Equipment Recapture Agreement, dated as of June 1, 2016 (the "**Equipment Recapture Agreement**"), from the Company and the Co-Obligor to the Agency in order to reflect the repayment of obligations of the Company and Co-Obligor upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire and install the Equipment in accordance with the Plans and Specifications; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to an Equipment Bill of Sale, dated the Equipment Closing Date (the "**Equipment Bill of Sale**"); and

WHEREAS, the Agency has agreed to lease the Equipment to the Company, and the Company desires to rent the Equipment from the Agency, upon the terms and conditions set forth in this Equipment Lease Agreement.

AGREEMENT

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

ARTICLE I
DEFINITIONS

All capitalized terms used in this Equipment Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II
REPRESENTATIONS AND COVENANTS

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

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

(b) The Agency will cause the Equipment to be acquired, leased, subleased and installed and will lease or sublease the Equipment to the Company pursuant to this Equipment Lease Agreement, all for the Public Purposes of the State.

(c) Neither the execution nor delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument.

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

(e) The Agency has been induced to enter into this Equipment Lease Agreement by the undertaking of the Company to utilize the Equipment in the Town of Brookhaven, Suffolk County, New York.

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

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

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

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

(d) The Facility and the design, acquisition, construction, equipping and operation thereof will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility, including, without limitation, the Site Plan Approval, and the SEQR Act. The Company shall defend, indemnify and hold harmless the Agency from any liability, including reasonable attorney's fees, resulting from any failure by the Company to comply with the provisions of this subsection. The acquisition, construction, renovation, equipping and operation of the Facility in accordance with the Site Plan Approval will be in compliance with the SEQR Act Negative Declaration adopted by the Planning Board of the Town of Brookhaven on March 7, 2016.

(e) The Company will complete the acquisition and installation of the Equipment substantially in accordance with the Plans and Specifications.

(f) The Company's Application is true, accurate and complete in all material respects.

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

(h) The Agency's involvement with the Facility will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or in the abandonment of one or more plants of the Facility occupant(s) located in the State

unless the Agency's involvement with the Facility (i) is reasonably necessary to discourage the Facility occupant(s) from removing such other plant or facility to a location outside the State, or (ii) is reasonably necessary to preserve the competitive position of the Facility occupant(s) in its respective industry.

(i) The Company agrees to take any actions deemed reasonably necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Officer or Chief Financial Officer, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(c), 2.2(h) and 9.3 of this Equipment Lease Agreement. Without limiting the generality of the foregoing, the Company will provide the Agency with any and all reasonably necessary information and materials describing proposed project occupants upon the reasonable request of the Agency.

ARTICLE III CONVEYANCE OF THE EQUIPMENT

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency lien-free title or leasehold interest to the Equipment, except for Permitted Encumbrances.

Section 3.2 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Equipment and the interest therein to be conveyed by this Equipment Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Equipment and the leasehold interests therein are securing the financial obligations of the Company, subject to Section 3.3 below. The Equipment and the leasehold interests therein secure the Company's obligations to the Agency under this Equipment Lease Agreement, including the Company's obligation to acquire, install and maintain the Equipment on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency in accordance with the terms of this Equipment Lease Agreement.

Section 3.3 Subordination of Equipment Lease Agreement. This Equipment Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Security Agreement or Security Agreements (including purchase money security interest granted to Equipment suppliers, vendors or lessors) which may be granted by the Agency and/or the Company on the Equipment or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

ARTICLE IV ACQUISITION AND INSTALLATION OF THE EQUIPMENT IN THE FACILITY

Section 4.1 Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire and install the Equipment in the Facility.

(b) A valid title or a valid leasehold interest in all Equipment incorporated or installed in the Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the Equipment. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest such title or leasehold interest or subleasehold interest in or to the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(c) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency appointment (i) to purchase, lease, sublease and install the Equipment in the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, including modifications thereof, with any other Persons, and in general to do all things which may be requisite or proper, all for purchasing, leasing, subleasing and installing the Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the purchasing, leasing, subleasing and installation of the Equipment, 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 to the Agency under the terms of any contract, order, receipt, or writing in connection with the leasing and installation of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

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

(e) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law of the State applicable to the acquisition and installation of the Equipment in the Facility and shall include in all contracts all provisions which may be required to be inserted therein by such provisions.

Section 4.2 Certificates of CompletionTo establish the Equipment Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company (a) stating that the acquisition, leasing, subleasing and installation of the Equipment in the Facility has been completed; and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition and installation has been made or provided for; and (ii) such other certificates as may be requested by the Agency. The Company agrees to complete the acquisition, leasing and installation of the Equipment in the Facility on or before December 31, 2019, or such other date as may be extended by the Agency ("**Equipment Lease Completion Date**").

Section 4.3 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their SuretiesIn the event of a default by any contractor, subcontractor, materialman or other Person 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 Company at its expense, either separately or in

conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding.

Section 4.4 Sales Tax Exemption.

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

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

(i) The Sales Tax Exemption shall be effective only for a term commencing on the Equipment Closing Date and expiring upon the earliest of (A) the termination of this Equipment Lease Agreement, (B) the Equipment Completion Date, (C) the completion of the installation of the Equipment as provided in Section 4.2 of this Equipment Lease Agreement, or (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 of this Equipment Lease Agreement.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this 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 of

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

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

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

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

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

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

(c) Procedures for Appointing Agents. If the Company desires to seek the appointment of the Company, or 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 Company must complete and submit Form ST-60 to the Agency.

(ii) The appointment of each such Agent as an agent for the Agency shall be effective only upon execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit B, following receipt of the completed Form ST-60 by the Agency. The determination whether or not to approve the

appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company. The Company shall provide a copy of such executed Sales Tax Agent Authorization Letter together with a copy of this Equipment Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

(iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Equipment Lease Agreement.

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

(e) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the renovation, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(f) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 28th with respect to the prior calendar year) file a Form ST-340 with NYS DTF with a copy to the Agency, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYS DTF, of the value of all Sales Tax

Savings claimed by the Company and each Agent in connection with the Equipment. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Equipment without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Equipment of such termination.

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

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

- (i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “**Special Provisions**”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Equipment Lease Agreement and the Special Provisions, the Special Provisions shall control.
- (ii) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Equipment Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “**Commissioner**”) to assess and determine State Sales and Use Taxes

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

(i) Subject to the provisions of Section 4.4(h) hereof, in the event that the Company 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 Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 4.4.

ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Equipment. The Agency hereby leases the Equipment, as particularly described in Exhibit A attached hereto, to the Company and the Company hereby takes the Equipment from the Agency upon the terms and conditions of this Equipment Lease Agreement.

Section 5.2 Duration of Equipment Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Equipment (subject to Sections 8.3 and 10.2 hereof) and the leasehold interest or subleasehold interest created hereby shall commence on the Equipment Closing Date and the Company shall accept possession of the Equipment on the Equipment Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold interest created hereby shall terminate at 11:59 p.m. on June 30, 2023 or on such earlier date as may be permitted by Section 11.1 and Article XI hereof (the “**Equipment Lease Term**”).

(c) Except as provided in Sections 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Equipment Lease Term from having quiet and peaceable possession and enjoyment of the Equipment and will, at the request of the Company and at the Company’s sole expense, cooperate with the

Company in order that the Company may have quiet and peaceable possession and enjoyment of the Equipment as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Equipment throughout the term of this Equipment Lease Agreement as follows: One Dollar (\$1.00) per year commencing on the Equipment Closing Date and continuing on the first Business Day of each and every January thereafter during the term of this Equipment Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000.00 on or before January 1 of each year commencing on January 1, 2017, and continuing through the term of the Equipment Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Equipment Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to, without duplication, the sum of the expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership, financing, leasing or subleasing of the Equipment or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Equipment Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency.

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

Section 5.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Equipment Lease Agreement or (iii) terminate this Equipment Lease Agreement for any cause whatsoever unless and until all obligations of the Company to the Agency have been satisfied.

The Company and the Agency hereby agree that the obligations and liabilities of the Company hereunder are the absolute and unconditional obligations and liabilities of the Company and not the obligations and liabilities of any officer, director or employee of the Company, and that no officer, director or employee of the Company shall have any

obligation or liability hereunder, except arising in connection with the gross negligence, recklessness, willful misconduct or criminal activity of such officer, director or employee of the Company.

ARTICLE VI
MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by Company.

The Company shall not abandon the Equipment or cause or permit any physical waste to the Equipment. During the Equipment Lease Term, the Company shall not remove any part of the Equipment outside of the jurisdiction of the Agency, other than for temporary periods necessary to effect repairs or replacements, and shall (i) keep the Equipment in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Equipment; and (iii) operate the Equipment in a sound and economic manner.

Section 6.2 Installation of Additional Equipment.

Subject to the provisions of Section 4.1 hereof, the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred and is continuing; or (ii) if any such removal shall materially adversely affect the structural integrity of the Facility or materially impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Reserved.

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

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Equipment, as determined by a recognized appraiser or insurer selected by the Company, or lender consultant selected by the lender. This coverage shall be in effect from and after the earliest of the date on which the Company accepts title to, or delivery of, or risk of loss with respect to, any Equipment.

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

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4 shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Sections 6.4 shall provide for payment of the losses to the Company or the Agency as their respective interests may appear hereof and shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Agency. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency as an additional insured. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation, in accordance with the Company's indemnification obligations.

(b) The certificates of insurance required by Sections 6.4(a) and (c) hereof shall be deposited with the Agency on or before the Equipment Closing Date. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new certificate or certificates of insurance or evidence that such policy or policies are no longer required by this Equipment Lease Agreement. The Company shall provide such further information with respect to the insurance coverage, including a true and complete copy of the

insurance policies, required by this Equipment Lease Agreement as the Agency may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as provided in Section 7.1 hereof and (ii) the Net Proceeds of the insurance required by Sections 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 and the excess, if any, shall be paid to the Company.

ARTICLE VII DAMAGE OR DESTRUCTION OF THE EQUIPMENT

Section 7.1 Damage or Destruction of the Equipment.

(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; and

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

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

(iv) except as set forth in paragraph (d) below, upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company; and

(v) the Company shall have the option to terminate this Equipment Lease Agreement pursuant to Article XI hereof or to promptly replace, repair, rebuild or restore the Equipment or the damaged part or component thereof to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications to the Equipment do not so change the nature of the Facility that it does not constitute a "Project" as such term is defined in the Act and provided that the Equipment will be subject to no Liens other than Permitted Encumbrances; and

(vi) the Agency shall have the right to terminate this Equipment Lease Agreement pursuant to Section 10.2 hereof if the Company does not promptly replace, repair, rebuild or restore the Equipment or the damaged part or component thereof as described in (v) above.

(b) 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 Company 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. Any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Company.

(c) The Company shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) hereof on behalf of the Agency and on its own behalf.

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

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE EQUIPMENT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE EQUIPMENT, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF THE ACQUISITION AND INSTALLATION OF THE EQUIPMENT. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE 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 Company agrees that the Agency or any of its members, directors, officers, agents (except the Company) or employees shall not be liable for and agrees to defend, indemnify, release 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 Equipment or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Equipment or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, leasing, subleasing, use and operation of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to this Equipment Lease Agreement and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its members, directors, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents (except the Company) 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 Company 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 respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

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

Section 8.3 Right to Inspect Equipment. The Agency and its duly authorized agents shall have the right at all reasonable times, upon reasonable notice, to inspect the Equipment.

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

Section 8.5 Qualification in State.The Company throughout the term of this Equipment Lease Agreement shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information.The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law (the "GML"). The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or the Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Accounts; Financial Statements.The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company.

Section 8.8 Compliance With Orders, Ordinances, Etc.

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

(b) Notwithstanding the provisions of subsection (a) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom.

(c) Notwithstanding the provisions of this Section 8.8, if, because of the Company's breach or violation of the provisions of subsection (a) hereof (without giving effect to subsection (b) hereof), the Agency, or any of its members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts reasonably necessary in the opinion of the Agency, and as the Agency's members, directors, officers, agents and employees deem sufficient, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment. The preceding shall not serve to limit or disclaim the Agency's liability to the Company for the Agency's acts or omissions as permitted by applicable law, except that the Agency shall only be liable to the Company for any injury to any person, any damage to any property or the Facility, or any fine, liability, expense or imprisonment, resulting from any grossly negligent or intentional action of any officer, employee, agent, representative, contractor, or subcontractor acting on behalf of the Agency with respect to the Equipment.

Section 8.9 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) hereof, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by nonpayment of any such item or items, the Equipment or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.10 Depreciation Deductions and Investment Tax Credit.The parties agree that, as between them, the Company shall be entitled to all depreciation deductions, if any, with respect to any depreciable property comprising a part of the Equipment and to any investment credit with respect to any part of the Equipment.

Section 8.11 Security Agreements.The Agency and the Company agree to grant a security interest in any Equipment financed with the proceeds of a loan to the lender of such

loan, including any purchase money security interest granted to Equipment suppliers, vendors, or lessors (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the security agreement is in a standard form and substance pre-approved by the Agency and acceptable to the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form security agreement) and if the security agreement contains the following provisions:

Section I. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under the loan or the security agreement. The lender will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this security agreement or the loan documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this security agreement or the loan documentation, the lender will look solely to the collateral covered by the security interest granted by this security agreement and/or the Company for the payment of the indebtedness secured by this security agreement or the loan documentation and for the performance of the provisions hereof or thereof. The lender will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this security agreement or the loan documentation. This agreement on the part of the lender shall not be construed in any way so as to effect or impair the lien of this security agreement or the lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this security agreement on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York nor the Town of Brookhaven, New York and neither the State of New York nor the Town of Brookhaven, New York

shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section II. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Equipment or arising by reason of or in connection with the use thereof or under this security agreement or any of the loan documentation, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing or financing of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein or under any of the loan documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the security agreement (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

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

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

Section 8.12 Leasing of Equipment.The Agency hereby agrees that the Company may lease any Equipment as agent for the Agency for a term not to exceed seven (7) years pursuant to the term of a lease and the Company may assign its rights under such lease to the Agency and the Agency shall sublease such Equipment to the Company pursuant to the terms of this Equipment Lease Agreement (in which event such lease shall be deemed a Permitted Encumbrance), if such lease is in a standard form and substance pre-approved by the Agency and acceptable (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form lease) to the Agency and the lease contains the following provisions:

Section I. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this lease. The lessor will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the rent, or other obligations evidenced by this lease or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this lease, the lessor will look solely to the Equipment and/or the Company for the payment of the rent secured by this lease and for the performance of the provisions hereof. The lessor will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this lease or the documentation executed and delivered in connection with the lease. This agreement on the part of the lessor shall not be construed in any way so as to effect or impair the lien of this lease or the lessor's right to foreclose or collect hereunder as provided by

law or construed in any way so as to limit or restrict any of the rights or remedies of the lessor in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any rent or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this lease on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York nor the Town of Brookhaven, New York and neither the State of New York nor the Town of Brookhaven, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section II. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Equipment or arising by reason of or in connection with the use thereof or under this lease, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing, subleasing and financing of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the lease (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the

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

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

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

Section 8.13 Reserved.

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

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

Section 9.1 Restriction on Sale of Equipment; Release of Certain Equipment.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Equipment or any part thereof or any of its rights under this Equipment Lease Agreement, except at the request of the Company in the ordinary course of the Company's business.

(b) The Agency and the Company from time to time, with the approval of the Agency, whose approval shall not be unreasonably withheld or delayed, shall release from the provisions of this Equipment Lease Agreement and the leasehold or subleasehold estate created hereby any part of, or interest in, the Equipment which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate to so release such part of, or interest in, the Equipment.

Section 9.2 Removal of Equipment.

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

(b) Upon the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate, and approved by the Agency (whose approval shall not be unreasonably withheld or delayed), to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

Section 9.3 Assignment and Subleasing.

(a) This Equipment Lease Agreement may not be assigned, in whole or in part, and the Equipment may not be subleased, in whole or in part, without the prior written consent of the Agency in each instance. Any assignment or sublease shall be on the following conditions:

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

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

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of this Equipment Lease Agreement shall be adversely affected thereby;

(v) the Equipment shall continue to constitute a “project” as such quoted term is defined in the Act; and

(vi) any sublessee will execute and deliver an Agency Compliance Agreement, in form and substance satisfactory to the Agency.

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

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 to all of the Equipment to any other public benefit corporation or political subdivision of the State of New York which has the legal authority to own and lease the Equipment and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Equipment Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the 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 Company. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

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

(ii) the failure by the Company to observe and perform any covenant contained in Sections 4.4, 6.4, 6.5, 8.4, 8.6, 8.8, 8.13, 9.3 and 10.4 hereof;

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

(iv) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i) and (ii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency;

(v) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors (the term "dissolution or liquidation of the Company" as used in this subsection shall not be construed to include any transaction permitted by Section 8.4 hereof); or

(vi) an Event of Default or default occurs and is continuing pursuant to the terms of this Equipment Lease Agreement.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1, 6.1 or 8.13 of this Equipment Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Equipment Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military

authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, and (B) all other payments due under this Equipment Lease Agreement;

(ii) terminate this Equipment Lease Agreement and the Sales Tax Exemption authorization, and reconvey the Equipment to the Company. The Agency shall have the right to execute an appropriate bill of sale with respect to the Equipment; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, to enforce the obligations, agreements or covenants of the Company under this Equipment Lease Agreement.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

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, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Equipment Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses.In the event the Company should default under any of the provisions of this Equipment Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

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

ARTICLE XI
EARLY TERMINATION OF EQUIPMENT LEASE AGREEMENT;
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Equipment Lease Agreement.The Company shall have the option to terminate this Equipment Lease Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payment shall be made (which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed) in compliance with the requirements set forth in Section 11.2 and 11.3 hereof.

Section 11.2 Conditions to Termination of Equipment Lease Agreement.In the event of the termination or expiration of this Equipment Lease Agreement in accordance with the provisions of Sections 5.2, 10.2 or 11.1 hereof, the Company shall pay or cause to be paid to the Agency an amount certified by the Agency as equal to all reasonable unpaid fees and expenses of the Agency incurred under the Agency Documents to the date of termination.

Section 11.3 Obligation to Purchase Equipment.Upon termination or expiration of the Lease Term, in accordance with Sections 5.2, 10.2 or 11.1 hereof, the Company shall purchase the Equipment from the Agency for the purchase price of One Dollar (\$1.00). In the event of an early termination pursuant to Section 11.1, the Company shall purchase the leasehold interest in the Equipment or take an assignment of any equipment leases by giving written notice to the Agency (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Tenant's election to purchase or take an assignment of lease and (ii) fixing the date of closing such purchase, which shall be the date on which this Equipment Lease Agreement is to be terminated.Conveyance on Purchase.At the closing of any purchase or assignment of lease of the Equipment pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the purchase price or assignment price, deliver to the Company all necessary documents approved by the Agency, whose approval shall not be unreasonably withheld or delayed, (i) to convey to the Company leasehold estate or title to the Equipment being purchased or leases being assigned, as such Equipment exists, subject only to the following: (A) any Liens to which leasehold estate or title to such Equipment was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the

creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Tenant 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 hereunder, and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance with respect to the Equipment.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally with a receipt obtained, or sent by first class or certified mail, postage prepaid, return receipt requested, or by a reputable overnight carrier (in each case, postage or delivery charges paid by the party giving such communication), addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

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

With a copy to:

Brookhaven Town Attorney's Office
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Annette Eaderesto, Esq.

To the Company:

Shoreham Solar Commons LLC
1 South Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: General Counsel

With a copy to:

Nixon Peabody LLP
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Attention: Denise Pursley, Esq.

Notices shall be deemed given when received, refused or returned by the carrier as undeliverable and all notices may be given by the attorney for a party with the same force as if given by such party.

Section 12.2 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.

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

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

Section 12.5 Execution of Counterparts. This 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 12.6 Applicable Law. This Equipment Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Equipment Lease Agreement shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk and the Company consents to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Equipment Lease Agreement.

Section 12.7 Waiver of Trial By Jury.

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

Section 12.8 List of Additional Equipment; Further Assurances.

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

Section 12.9 Survival of Obligations. This Equipment Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 5.3 and all indemnities shall survive the foregoing and any termination or expiration of this 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 or affect the meaning of or be taken as an interpretation of any provision of this Equipment Lease Agreement.

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

IN WITNESS WHEREOF, the Agency and the Company have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date and year first above written.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

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


**SHOREHAM SOLAR COMMONS
LLC**

By: _____
Name: James Shield
Title: Vice President



IN WITNESS WHEREOF, the Agency and the Company have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date and year first above written.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

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

**SHOREHAM SOLAR COMMONS
LLC**

By: _____
Name:
Title:

EXHIBIT A

Equipment

All Eligible Items acquired and installed and/or to be acquired and installed by Shoreham Solar Commons LLC in connection with the Town of Brookhaven Industrial Development Agency's Shoreham Solar Commons LLC 2016 Facility located at 24 Cooper Street, Shoreham, Town of Brookhaven, Suffolk County, New York and leased by the Town of Brookhaven Industrial Development Agency pursuant to the terms of the Equipment Lease Agreement, dated as of June 1, 2016.

EXHIBIT B

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: December 31, 2019

**ELIGIBLE LOCATION:
24 COOPER STREET, SHOREHAM, TOWN OF BROOKHAVEN, SUFFOLK
COUNTY, NEW YORK**

_____, 201_

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency
(Shoreham Solar Commons LLC 2016 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, 2016 (the "Equipment Lease Agreement"), between the Agency and Shoreham Solar Commons LLC, a limited liability company, organized and existing under the laws of the state of Delaware and authorized to transact business in the State of New York, (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Equipment described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in Schedule A of the Equipment Lease Agreement.

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

avail itself of such exemptions when purchasing eligible materials and services in connection with the Equipment and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

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

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

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

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development

Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Equipment by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Equipment (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

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

9. Special Provisions Relating to State Sales Tax Savings.

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the “Special Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the 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 the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company 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 Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

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

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

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

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

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

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

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

_____ **[AGENT]**

By: _____
Name:
Title:

Exhibit A

To
SALES TAX AGENT AUTHORIZATION LETTER

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

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

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

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

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;

- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

EXHIBIT C

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:						

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

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

SCHEDULE A

SCHEDULE OF DEFINITIONS

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

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

“Agency Documents” means the Equipment Lease Agreement and the Equipment Recapture Agreement.

“Agent” shall have the meaning set forth in Section 4.4(c).

“Application” means that certain application of the Company and/or others to the Agency for financial assistance in connection with the Facility, dated January 5, 2016, as amended and supplemented.

“Approving Resolution” means the resolution adopted by the Agency on June 8, 2016, authorizing the execution and delivery of the Agency Documents as such resolution may be amended and supplemented from time to time.

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

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

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

“Company” shall mean Shoreham Solar Commons LLC, a limited liability company, organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, its successor and/or assigns.

“Company Documents” means the Equipment Bill of Sale, the Equipment Lease Agreement, and the Equipment Recapture Agreement.

“Company Lease” means the Company Lease Agreement intended to be entered into by and between the Company, as lessor, and the Agency, as lessee, subsequent to the date of this Equipment Lease Agreement, with respect to the Land and the Improvements, as the same may be amended from time to time.

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

“Equipment” means all machinery, equipment and other personal property acquired by the Company to be used by the Company in connection with the Facility, as described in the Equipment Lease Agreement.

“Equipment Closing Date” means June 20, 2016.

“Equipment Completion Date” means the date of completion of the acquisition and installation of the Equipment at the Land as certified pursuant to Section 4.2 of the Equipment Lease Agreement.

“Equipment Recapture Agreement” means the Equipment Recapture Agreement, dated as of June 1, 2016, by and among the Company, Invenergy Solar LLC, and the Agency, as amended from time to time.

“Equipment Termination Date” shall mean such date on which the Sales Tax Exemption shall terminate pursuant to Section 4.2 of the Equipment Lease Agreement.

“Event of Default” when used with respect to the Equipment Lease Agreement, means any of the events defined as Events of Default by Section 10.1 of the Equipment Lease Agreement.

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

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

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

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

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

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

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

“Lease Agreement” means the Lease Agreement intended to be entered into by and between the Agency, as sublessor, and the Company, as sublessee, subsequent to the date of this Equipment Lease Agreement, with respect to the Company Facility, as the same may be amended from time to time.

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

“Maximum Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Equipment Lease Agreement, which shall equal \$7,000,000.00, or such maximum dollar amount as increased by the Agency pursuant a certificate of determination and any additional documents as may be required by the Agency for such increase.

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

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

“Plans and Specifications” means the plans and specifications for the Improvements and the installation of the Equipment, prepared for the Company and approved by the Lender, if any, and the Agency, as revised from time to time.

“Permitted Encumbrances” means, with respect to the Facility, (i) the Equipment Lease Agreement, (ii) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (iii) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the the Agency or its counsel, and (iv) any security interest granted in accordance with Section 8.11 of this Equipment Lease Agreement.

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

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

“Public Purposes” means the State’s objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real

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

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 4.4 of the Equipment Lease Agreement.

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

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

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

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

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

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

“Site Plan Approval” means the Site Plan Approval issued by the Town of Brookhaven Department of Planning, Environmental and Land Management on March 7, 2016.

“State” means the State of New York.

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

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

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

“Transaction Counsel” means the law firm of Weinberg, Gross & Pergament LLP.

“Transaction Documents” means the Agency Documents and the Company Documents.